

COMMITTEE PRINT
(SHOWING H.R. 2580 As ADOPTED BY
THE SUBCOMMITTEE ON FINANCE AND
HAZARDOUS MATERIALS
ON SEPTEMBER 29, 1999)

Strike all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Land Recycling Act of 1999”.

4 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Amendments to Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

TITLE I—LAND RECYCLING

Sec. 101. Findings.

Sec. 102. Cleanups pursuant to State response programs.

Sec. 103. Additions to National Priorities List.

Sec. 104. Innocent landowners.

Sec. 105. Bona fide prospective purchaser liability.

Sec. 106. Innocent governmental entities.

Sec. 107. Contiguous properties.

Sec. 108. Remedy selection.

Sec. 109. Brownfields grants.

**TITLE II—EXPENDITURES FROM THE HAZARDOUS SUBSTANCE
SUPERFUND**

Sec. 201. Expenditures from the Hazardous Substance Superfund.

Sec. 202. Authorization of appropriations from general revenues.

Sec. 203. Completion of National Priorities List.

TITLE III—LIABILITY REFORM

Sec. 301. Liability relief for innocent parties.

Sec. 302. Clarifications of certain liability.

Sec. 303. Liability relief for small businesses, municipal solid waste, sewage sludge, municipal owners and operators, and de micromis contributors.

Sec. 304. Liability of response action contractors.
Sec. 305. Amendments to section 122.
Sec. 306. Clarification of liability for recycling transactions.
Sec. 307. Allocation.
Sec. 308. Standard for cleanup by dry cleaners.

1 **SEC. 2. AMENDMENTS TO COMPREHENSIVE ENVIRON-**
2 **MENTAL RESPONSE, COMPENSATION, AND LI-**
3 **ABILITY ACT OF 1980.**

4 Except as otherwise specifically provided, whenever in
5 this Act an amendment or repeal is expressed in terms
6 of an amendment to, or repeal of, a section or other provi-
7 sion of law, the reference shall be considered to be made
8 to a section or other provision of the Comprehensive Envi-
9 ronmental Response, Compensation, and Liability Act of
10 1980 (42 U.S.C. 9601 et seq.).

11 **TITLE I—LAND RECYCLING**

12 **SEC. 101. FINDINGS.**

13 (a) FINDINGS.—Congress finds the following:

14 (1) Brownfields are parcels of land that contain
15 or contained abandoned or under used commercial
16 or industrial facilities, the expansion or redevelop-
17 ment of which is complicated by the actual or poten-
18 tial presence of hazardous substances, pollutants, or
19 contaminants.

20 (2) Brownfields, which may number in the hun-
21 dreds of thousands nationwide, threaten the environ-

1 ment, devalue surrounding property, erode State and
2 local tax bases, and prevent job growth.

3 (3) The primary environmental reason that cur-
4 rent owners and prospective developers do not rede-
5 velop brownfields is their fear about the potential li-
6 ability under environmental laws associated with the
7 cleanup and redevelopment of these sites.

8 (4) Current Federal law poses a barrier to the
9 cleanup and redevelopment of brownfields, leading
10 instead to the development of so-called greenfields,
11 contributing to urban sprawl, creating infrastructure
12 problems, and reducing recreational and agricultural
13 opportunities.

14 (5) Cleanup and redevelopment of brownfields
15 will reduce environmental contamination, encourage
16 job growth, enhance State and local tax bases, and
17 curb the development of greenfields.

18 (6) Many States have enacted cleanup pro-
19 grams to address the brownfields problem by allow-
20 ing for the consideration of future land use in decid-
21 ing appropriate cleanup standards and providing
22 clear releases of liability upon completion of clean-
23 ups.

24 (7) State response programs have been very ef-
25 fective in promoting the cleanup and redevelopment

1 of brownfields while ensuring the adequate protec-
2 tion of human health and the environment.

3 (b) PURPOSES AND OBJECTIVES.—The purposes and
4 objectives of this title are—

5 (1) to increase significantly the pace of re-
6 sponse activities at contaminated sites by promoting
7 and encouraging the creation, development, and en-
8 hancement of State response programs; and

9 (2) to remove existing Federal barriers to the
10 cleanup of brownfield sites; and

11 (3) to benefit the public health, welfare, and the
12 environment by cleaning up and returning contami-
13 nated sites to economically productive or other bene-
14 ficial uses.

15 **SEC. 102. CLEANUPS PURSUANT TO STATE RESPONSE PRO-**
16 **GRAMS.**

17 (a) PROHIBITION ON ENFORCEMENT.—Except as
18 otherwise provided in this section, neither the President
19 nor any other person (other than a State) may use any
20 authority of the Comprehensive Environmental Response,
21 Compensation, and Liability Act of 1980 (42 U.S.C. 9601
22 et seq.) or section 7002(a)(1)(B) or section 7003 of the
23 Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) to com-
24 mence an administrative or judicial action under either of
25 those Acts with respect to any release or threatened re-

1 lease at a facility that is, or has been, the subject of a
2 response action pursuant to a State program that meets
3 the requirements of subsection (b).

4 (b) STATE REQUIREMENTS.—The prohibition in sub-
5 section (a) applies with respect to a facility that is, or has
6 been, the subject of a response action pursuant to a State
7 program for undertaking response actions at facilities
8 where there is a release or threatened release of hazardous
9 substances if such program has been submitted to the Ad-
10 ministrator of the Environmental Protection Agency to-
11 gether with a certification by the State that—

12 (1) the State has enacted such program into
13 law,

14 (2) the State has committed the financial and
15 personnel resources necessary to carry out such pro-
16 gram,

17 (3) such program will be implemented in a
18 manner protective of human health and the environ-
19 ment, and

20 (4) such program includes meaningful opportu-
21 nities for public participation.

22 (c) LIMITATION ON PROHIBITION.—The prohibition
23 under subsection (a) and the exemption under subsection
24 (f) shall not apply with respect to any of the following:

1 (1) Any facility listed on the National Priorities
2 List, unless the Administrator, on a facility-by-facil-
3 ity basis and pursuant to an agreement with the
4 State concerned, makes a finding that a facility list-
5 ed on the National Priorities List is eligible to par-
6 ticipate in a State cleanup program meeting the re-
7 quirements of subsection (b).

8 (2) Any facility for which the Governor of a
9 State has requested Environmental Protection Agen-
10 cy assistance to perform a response action.

11 (3) Any facility owned or operated by a depart-
12 ment, agency, or instrumentality of the United
13 States.

14 (4) A release or threatened release to the extent
15 that a response action has been required pursuant to
16 an administrative order or judicial order or decree
17 entered into by the United States under any of the
18 following laws before the commencement of a re-
19 sponse action pursuant to a State program described
20 in subsection (a):

21 (A) The Comprehensive Environmental Re-
22 sponse, Compensation, and Liability Act of
23 1980 (42 U.S.C. 9601 et seq.).

24 (B) The Solid Waste Disposal Act (42
25 U.S.C. 6901 et seq.).

1 (C) The Federal Water Pollution Control
2 Act (33 U.S.C. 1251 et seq.).

3 (D) The Toxic Substances Control Act (15
4 U.S.C. 2601 et seq.).

5 (E) Title XIV of the Public Health Service
6 Act (commonly known as the Safe Drinking
7 Water Act) (42 U.S.C. 300f et seq.).

8 (5) A release or threatened release for which re-
9 sponse actions are immediately required to prevent
10 or mitigate an imminent and substantial
11 endangerment to human health or the environment
12 and for which the State is not responding in a time-
13 ly manner.

14 (d) PRIOR ACTIONS.—Nothing in this section shall
15 affect administrative or judicial action commenced prior
16 to the date of enactment of this section.

17 (e) PERMITS AND OTHER REQUIREMENTS.—(1) 18
18 months after enactment of this Act, Federal permit or per-
19 mit revisions shall not be required for the on-site portion
20 of response actions that are subject to the prohibition
21 under subsection (a). Nothing in this paragraph dimin-
22 ishes the application of substantive standards required by
23 law.

24 (2) Within 12 months after enactment of this Act and
25 after public notice and comment and consultation with

1 State Governors, the Administrator shall promulgate regu-
2 lations which streamline any reporting requirements con-
3 nected with implementation of substantive requirements of
4 Federal law and consistent with paragraph (1).

5 (f) ASSISTANCE TO STATES.—The Administrator
6 shall provide technical, financial, and other assistance to
7 States to establish and enhance State response programs.
8 The Administrator shall encourage the States to develop
9 risk sharing pools, indemnity pools, or insurance mecha-
10 nisms to provide financing for response actions under their
11 response programs.

12 (g) EFFECT OF RESPONSE.—Performance of a re-
13 sponse action pursuant to a State program under this sec-
14 tion shall not constitute an admission of liability under
15 any Federal, State, or local law or regulation or in any
16 citizens suit or other private action.

17 **SEC. 103. ADDITIONS TO NATIONAL PRIORITIES LIST.**

18 (a) ADDITIONS TO NPL.—Section 105 (42 U.S.C.
19 9605) is amended by adding at the end the following new
20 subsection:

21 “(h) ADDITIONS TO NPL.—The President may add
22 a facility to the National Priorities List only after request-
23 ing and obtaining the concurrence of the Governor of the
24 State in which the facility is located. If the Governor
25 assures the President that the State is addressing, or will

1 address, the site under State authority, and the Governor
2 does not concur in the listing of the site, the President
3 shall not list the site.”.

4 (b) CROSS REFERENCE.—Subparagraph (B) of sec-
5 tion 105(a)(8) is amended by inserting after “shall revise
6 the list” the following: “, subject to subsection (h),”.

7 **SEC. 104. INNOCENT LANDOWNERS.**

8 (a) IN GENERAL.—Section 107 (42 U.S.C. 9607) is
9 amended by adding at the end the following new sub-
10 section:

11 “(o) INNOCENT LANDOWNERS.—

12 “(1) CONDUCT OF ENVIRONMENTAL ASSESS-
13 MENT.—A person who has acquired real property
14 shall have made all appropriate inquiry within the
15 meaning of subparagraph (B) of section 101(35) if
16 he establishes that, within 180 days prior to the
17 time of acquisition, an environmental site assess-
18 ment of the real property was conducted that meets
19 the requirements of this subsection.

20 “(2) DEFINITION OF ENVIRONMENTAL SITE AS-
21 SESSMENT.—For purposes of this subsection, the
22 term ‘environmental site assessment’ means an as-
23 sessment conducted in accordance with the stand-
24 ards set forth in the American Society for Testing
25 and Materials (ASTM) Standard E1527–94, titled

1 ‘Standard Practice for Environmental Site Assess-
2 ments: Phase I Environmental Site Assessment
3 Process’ or with alternative standards issued by rule
4 by the Administrator or promulgated or developed
5 by others and designated by rule by the Adminis-
6 trator. Before issuing or designating alternative
7 standards, the Administrator shall first conduct a
8 study of commercial and industrial practices con-
9 cerning environmental site assessments in the trans-
10 fer of real property in the United States. Any such
11 standards issued or designated by the Administrator
12 shall also be deemed to constitute commercially rea-
13 sonable and generally accepted standards and prac-
14 tices for purposes of this paragraph. In issuing or
15 designating any such standards, the Administrator
16 shall consider requirements governing each of the
17 following:

18 “(A) Interviews of owners, operators, and
19 occupants of the property to determine informa-
20 tion regarding the potential for contamination.

21 “(B) Review of historical sources as nec-
22 essary to determine previous uses and occupan-
23 cies of the property since the property was first
24 developed. For purposes of this subclause, the
25 term ‘historical sources’ means any of the fol-

1 lowing, if they are reasonably ascertainable: re-
2 corded chain of title documents regarding the
3 real property, including all deeds, easements,
4 leases, restrictions, and covenants, aerial photo-
5 graphs, fire insurance maps, property tax files,
6 USGS 7.5 minutes topographic maps, local
7 street directories, building department records,
8 zoning/land use records, and any other sources
9 that identify past uses and occupancies of the
10 property.

11 “(C) Determination of the existence of re-
12 corded environmental cleanup liens against the
13 real property which have arisen pursuant to
14 Federal, State, or local statutes.

15 “(D) Review of reasonably ascertainable
16 Federal, State, and local government records of
17 sites or facilities that are likely to cause or con-
18 tribute to contamination at the real property,
19 including, as appropriate, investigation reports
20 for such sites or facilities; records of activities
21 likely to cause or contribute to contamination at
22 the real property, including landfill and other
23 disposal location records, underground storage
24 tank records, hazardous waste handler and gen-
25 erator records and spill reporting records; and

1 such other reasonably ascertainable Federal,
2 State, and local government environmental
3 records which could reflect incidents or activi-
4 ties which are likely to cause or contribute to
5 contamination at the real property.

6 “(E) A visual site inspection of the real
7 property and all facilities and improvements on
8 the real property and a visual inspection of im-
9 mediately adjacent properties, including an in-
10 vestigation of any hazardous substance use,
11 storage, treatment, and disposal practices on
12 the property.

13 “(F) Any specialized knowledge or experi-
14 ence on the part of the defendant.

15 “(G) The relationship of the purchase
16 price to the value of the property if
17 uncontaminated.

18 “(H) Commonly known or reasonably as-
19 certainable information about the property.

20 “(I) The obviousness of the presence or
21 likely presence of contamination at the prop-
22 erty, and the ability to detect such contamina-
23 tion by appropriate investigation.

24 A record shall be considered to be ‘reasonably ascer-
25 tainable’ for purposes of this paragraph if a copy or

1 reasonable facsimile of the record is publicly avail-
2 able by request (within reasonable time and cost
3 constraints) and the record is practically reviewable.

4 “(3) MAINTENANCE OF INFORMATION.—No
5 presumption shall arise under paragraph (1) unless
6 the defendant has maintained a compilation of the
7 information reviewed and gathered in the course of
8 the environmental site assessment.”.

9 (b) CROSS REFERENCE.—Section 101(35)(B) (42
10 U.S.C. 9601(35)(B)) is amended by inserting after “all
11 appropriate inquiry” the following: “(as specified in sec-
12 tion 107(o))”.

13 **SEC. 105. BONA FIDE PROSPECTIVE PURCHASER LIABILITY.**

14 (a) LIABILITY.—Section 107 (42 U.S.C. 9607) is fur-
15 ther amended by adding at the end the following new sub-
16 sections:

17 “(p) BONA FIDE PROSPECTIVE PURCHASER.—(1)
18 Notwithstanding paragraphs (1) through (4) of subsection
19 (a), a person who does not impede the performance of a
20 response action or natural resource restoration at a facil-
21 ity shall not be liable to the extent liability at such facility
22 is based solely on paragraph (1) of subsection (a) for a
23 release or threat of release from the facility, and the per-
24 son is a bona fide prospective purchaser of the facility.

1 “(2) For purposes of this subsection, the term ‘bona
2 fide prospective purchaser’ means a person who acquires
3 ownership of a facility after the date of enactment of this
4 subsection, or a tenant of such a person, who can establish
5 each of the following by a preponderance of the evidence:

6 “(A) All active disposal of hazardous substances
7 at the facility occurred before that person acquired
8 the facility.

9 “(B) The person made all appropriate inquiry
10 into the previous ownership and uses of the facility
11 and its real property in accordance with generally
12 accepted commercial and customary standards and
13 practices. Standards described in subsection (o)(2)
14 (relating to innocent landowners) shall satisfy the
15 requirements of this subparagraph. In the case of
16 property for residential or other similar use, pur-
17 chased by a nongovernmental or noncommercial enti-
18 ty, a site inspection and title search that reveal no
19 basis for further investigation satisfy the require-
20 ments of this subparagraph.

21 “(C) The person provided all legally required
22 notices with respect to the discovery or release of
23 any hazardous substances at the facility.

24 “(D) The person exercised appropriate care
25 with respect to hazardous substances found at the

1 facility by taking reasonable steps to stop on-going
2 releases, prevent threatened future releases of haz-
3 ardous substances, and prevent or limit human or
4 natural resource exposure to hazardous substances
5 previously released into the environment.

6 “(E) The person provides full cooperation, as-
7 sistance, and facility access to persons authorized to
8 conduct response actions at the facility, including
9 the cooperation and access necessary for the installa-
10 tion, integrity, operation, and maintenance of any
11 complete or partial response action at the facility.

12 “(F) The person is not affiliated with any other
13 person liable for response costs at the facility,
14 through any direct or indirect familial relationship,
15 or any contractual, corporate, or financial relation-
16 ship other than that created by the instruments by
17 which title to the facility is conveyed or financed.

18 “(q) PROSPECTIVE PURCHASER AND WINDFALL
19 LIEN.—(1) In any case in which there are unrecovered
20 response costs at a facility for which an owner of the facil-
21 ity is not liable by reason of subsection (p), and the condi-
22 tions described in paragraph (2) are met, the United
23 States shall have a lien upon such facility for such unre-
24 covered costs. Such lien—

1 “(A) shall not exceed the increase in fair mar-
2 ket value of the property attributable to the response
3 action at the time of a subsequent sale or other dis-
4 position of property;

5 “(B) shall arise at the time costs are first in-
6 curred by the United States with respect to a re-
7 sponse action at the facility;

8 “(C) shall be subject to the requirements for
9 notice and validity established in paragraph (3) of
10 subsection (l); and

11 “(D) shall continue until the earlier of satisfac-
12 tion of the lien or recovery of all response costs in-
13 curred at the facility.

14 “(2) The conditions referred to in paragraph (1) are
15 the following:

16 “(A) A response action for which there are un-
17 recovered costs is carried out at the facility.

18 “(B) Such response action increases the fair
19 market value of the facility above the fair market
20 value of the facility that existed within 6 months be-
21 fore the response action was taken.”.

22 **SEC. 106. INNOCENT GOVERNMENTAL ENTITIES.**

23 Section 107 (42 U.S.C. 9607) is further amended by
24 adding at the end the following new subsection:

1 “(r) INNOCENT GOVERNMENTAL ENTITIES.—There
2 shall be no liability under subsection (a) for any State or
3 local government if such liability is based solely on—

4 “(A) the granting of a license or permit to con-
5 duct business; or

6 “(B) the State or local government’s status as
7 an owner or operator of the facility or vessel, and
8 the State or local government—

9 “(i) acquired the facility or vessel by es-
10 cheat or through any other involuntary transfer
11 or through the exercise of eminent domain, and

12 “(ii) establishes by a preponderance of the
13 evidence that it—

14 “(I) acquired the facility or vessel
15 after the disposal or placement of the haz-
16 ardous substances for which liability is al-
17 leged;

18 “(II) did not, by any act or omission,
19 cause or contribute to the release or
20 threatened release of such hazardous sub-
21 stances; and

22 “(III) exercised appropriate care with
23 respect to such hazardous substances tak-
24 ing into consideration the characteristics of
25 such hazardous substances, in light of all

1 relevant facts, circumstances, and generally
2 accepted good commercial and customary
3 standards and practices at the time of the
4 defendant's acts or omissions.”.

5 **SEC. 107. CONTIGUOUS PROPERTIES.**

6 Section 107 (42 U.S.C. 9607) is further amended by
7 adding at the end the following new subsection:

8 “(s) CONTIGUOUS PROPERTIES.—(1) A person (other
9 than the United States or a department, agency, or instru-
10 mentality of the United States) who owns or operates real
11 property that is contiguous to or otherwise similarly situ-
12 ated with respect to real property on which there has been
13 a release or threatened release of a hazardous substance
14 and that is or may be contaminated by such release shall
15 not be liable under subsection (a) (1) or (2) by reason
16 of such ownership or operation solely by reason of such
17 contamination if such person—

18 “(A) did not cause, contribute to, or consent to
19 the release or threatened release;

20 “(B) provides full cooperation, assistance, and
21 facility access to persons authorized to conduct re-
22 sponse actions at the facility, including the coopera-
23 tion and access necessary for the installation, integ-
24 rity, operation, and maintenance of any complete or
25 partial response action at the facility; and

1 “(C) is not affiliated with any other person lia-
2 ble for response costs at the facility, through any di-
3 rect or indirect familial relationship, or any contrac-
4 tual, corporate, or financial relationship.

5 “(2) The President may issue an assurance of no en-
6 forcement action under this Act to any such person and
7 may grant any such person protection against cost recov-
8 ery and contribution actions pursuant to section 113(f)(2).
9 Such person may also petition the President to exclude
10 from the description of a National Priorities List site such
11 contiguous real property, if such property is or may be
12 contaminated solely by ground water that flows under
13 such property and is not used as a source of drinking
14 water. The President may grant such a petition pursuant
15 to such procedures as he deems appropriate.”.

16 **SEC. 108. REMEDY SELECTION.**

17 Section 121 (42 U.S.C. 9621) is amended as follows:

18 (1) By inserting the following before the period
19 at the end of the first sentence in subsection (b)(1):
20 “to the extent practicable, considering the nature
21 and timing of reasonably anticipated uses of land,
22 water, and other resources”.

23 (2) By adding after the first sentence in sub-
24 section (b)(1): “The preferences for treatment or
25 permanent solutions in this paragraph shall not

1 apply to a treatment option or permanent solution
2 that would increase risk to the community or to
3 workers' health."

4 (3) By striking "maximum" in the penultimate
5 sentence of subsection (b)(1).

6 (4) By striking "or is relevant and appropriate"
7 and "or relevant and appropriate" in subsection
8 (d)(2)(A).

9 (5) By striking "Level Goals" in subsection
10 (d)(2)(A) and inserting "Levels".

11 (6) By striking "and water quality criteria es-
12 tablished under section 304 or 303 of the Clean
13 Water Act where such goals or criteria are relevant
14 and appropriate under the circumstances of the re-
15 lease of threatened release" in subsection (d)(2)(A)
16 and inserting "where such levels are relevant and
17 appropriate under the circumstances of the release
18 or threatened release, considering the timing of any
19 reasonably anticipated use of water as drinking
20 water and reasonable points of compliance".

21 (7) In subsection (d)(2)(B) by striking clause
22 (i), striking "(ii)", and redesignating subclauses (I)
23 through (III) as clauses (i) through (iii).

24 (8) By adding the following new subsection at
25 the end thereof:

1 “(g) RISK ASSESSMENT AND CHARACTERIZATION
2 PRINCIPLES.—Risk assessments and characterizations
3 conducted for remedial actions subject to this section
4 shall—

5 “(1) provide scientifically objective assessments,
6 estimates, and characterizations which neither mini-
7 mize nor exaggerate the nature and magnitude of
8 risks to human health and the environment;

9 “(2) be based on the best available scientific
10 and technical information, including data on bio-
11 availability and site-specific information; and

12 “(3) be based on an analysis of the weight of
13 the scientific evidence that supports conclusions
14 about a problem’s potential risk to human health
15 and the environment.”.

16 **SEC. 109. BROWNFIELDS GRANTS.**

17 (a) IN GENERAL.—Title I (42 U.S.C. 9601 et seq.)
18 is amended by adding at the end the following:

19 **“SEC. 127. BROWNFIELDS GRANTS.**

20 “(a) DEFINITIONS.—In this section, the following
21 definitions apply:

22 “(1) ADMINISTRATIVE COST.—The term ‘ad-
23 ministrative cost’ does not include the cost of—

24 “(A) site inventories;

1 “(B) investigation and identification of the
2 extent of contamination;

3 “(C) design and performance of a response
4 action; or

5 “(D) monitoring of natural resources.

6 “(2) BROWNFIELD FACILITY.—

7 “(A) IN GENERAL.—The term ‘brownfield
8 facility’ means real property with respect to
9 which expansion, development, or redevelopment
10 is complicated by the presence or potential pres-
11 ence of a hazardous substance.

12 “(B) EXCLUDED FACILITIES.—The term
13 ‘brownfield facility’ does not include—

14 “(i) any portion of real property that
15 is the subject of an ongoing removal or
16 planned removal under section 104;

17 “(ii) any portion of real property that
18 is listed or has been proposed for listing on
19 the National Priorities List;

20 “(iii) any portion of real property with
21 respect to which a cleanup is proceeding
22 under a permit, an administrative order, or
23 a judicial consent decree entered into by
24 the United States or an authorized State
25 under this Act, the Solid Waste Disposal

1 Act (42 U.S.C. 6901 et seq.), the Federal
2 Water Pollution Control Act (33 U.S.C.
3 1251 et seq.), the Toxic Substances Con-
4 trol Act (15 U.S.C. 2601 et seq.), or the
5 Safe Drinking Water Act (42 U.S.C. 300f
6 et seq.);

7 “(iv) a facility that is owned or oper-
8 ated by a department, agency, or instru-
9 mentality of the United States, except a
10 facility located on lands held in trust for
11 an Indian tribe; or

12 “(v) a portion of a facility for which
13 assistance for response activity has been
14 obtained under subtitle I of the Solid
15 Waste Disposal Act (42 U.S.C. 6991 et
16 seq.) from the Leaking Underground Stor-
17 age Tank Trust Fund established under
18 section 9508 of the Internal Revenue Code
19 of 1986.

20 “(3) ELIGIBLE ENTITY.—

21 “(A) IN GENERAL.—The term ‘eligible en-
22 tity’ means—

23 “(i) a State or a political subdivision
24 of a State, including—

1 “(I) a general purpose unit of
2 local government; and

3 “(II) a regional council or group
4 of general purpose units of local gov-
5 ernment;

6 “(ii) a redevelopment agency that is
7 chartered or otherwise sanctioned by a
8 State or other unit of government; and

9 “(iii) an Indian tribe.

10 “(B) EXCLUDED ENTITIES.—The term ‘el-
11 igible entity’ does not include any entity that is
12 not in full compliance with the requirements of
13 an administrative order, judicial consent decree,
14 or closure plan under a permit which has been
15 issued or entered into by the United States or
16 an authorized State under this Act, the Solid
17 Waste Disposal Act (42 U.S.C. 6901 et seq.),
18 the Federal Water Pollution Control Act (33
19 U.S.C. 1251 et seq.), the Toxic Substances
20 Control Act (15 U.S.C. 2601 et seq.), or the
21 Safe Drinking Water Act (42 U.S.C. 300f et
22 seq.) with respect to the real property or por-
23 tion thereof which is the subject of the order,
24 judicial consent decree, or closure plan.

1 “(b) BROWNFIELD ASSESSMENT GRANT PRO-
2 GRAM.—

3 “(1) ESTABLISHMENT OF PROGRAM.—The
4 President shall establish a program to provide
5 grants to eligible entities for inventory and assess-
6 ment of brownfield facilities.

7 “(2) ASSISTANCE FOR SITE ASSESSMENT.—On
8 approval of an application made by an eligible entity,
9 the President may make grants to the eligible entity
10 to be used for developing an inventory and con-
11 ducting an assessment of 1 or more brownfield fa-
12 cilities.

13 “(3) APPLICATIONS.—

14 “(A) IN GENERAL.—Any eligible entity
15 may submit an application to the President, in
16 such form as the President may require, for a
17 grant under this subsection for 1 or more
18 brownfield facilities.

19 “(B) APPLICATION REQUIREMENTS.—An
20 application for a grant under this subsection
21 shall include information relevant to the rank-
22 ing criteria established under paragraph (4) for
23 the facility or facilities for which the grant is
24 requested.

1 “(4) RANKING CRITERIA.—The President shall
2 establish a system for ranking grant applications
3 submitted under this subsection that includes the
4 following criteria:

5 “(A) The demonstrated need for Federal
6 assistance.

7 “(B) The extent to which a grant will
8 stimulate the availability of other funds for en-
9 vironmental remediation and subsequent rede-
10 velopment of the area in which the brownfield
11 facilities are located.

12 “(C) The estimated extent to which a
13 grant would facilitate the identification of or fa-
14 cilitate a reduction in health and environmental
15 risks.

16 “(D) The potential to stimulate economic
17 development of the area, such as the following:

18 “(i) The relative increase in the esti-
19 mated fair market value of the area as a
20 result of any necessary response action.

21 “(ii) The potential of a grant to cre-
22 ate new or expand existing business and
23 employment opportunities on completion of
24 any necessary response action.

1 “(iii) The estimated additional tax
2 revenues expected to be generated by eco-
3 nomic redevelopment in the area in which
4 a brownfield facility is located.

5 “(E) The financial involvement of the
6 State and local government in any response ac-
7 tion planned for a brownfield facility and the
8 extent to which the response action and the
9 proposed redevelopment is consistent with any
10 applicable State or local community economic
11 development plan.

12 “(F) The extent to which the site assess-
13 ment and subsequent development involves the
14 active participation and support of the local
15 community.

16 “(5) MAXIMUM GRANT AMOUNT PER FACIL-
17 ITY.—A grant made to an eligible entity under this
18 subsection shall not exceed \$200,000 with respect to
19 any brownfield facility covered by the grant.

20 “(c) BROWNFIELD REMEDIATION GRANT PRO-
21 GRAM.—

22 “(1) ESTABLISHMENT OF PROGRAM.—The
23 President shall establish a program to provide
24 grants to eligible entities to be used for capitaliza-

1 tion of revolving loan funds for remedial actions at
2 brownfield facilities.

3 “(2) ASSISTANCE FOR SITE REMEDIATION.—

4 Upon approval of an application made by an eligible
5 entity, the President may make grants to the eligible
6 entity to be used for establishing a revolving loan
7 fund. Any fund established using such grants shall
8 be used to make loans to a State, a site owner, or
9 a site developer for the purpose of carrying out re-
10 medial actions at 1 or more brownfield facilities.

11 “(3) APPLICATIONS.—

12 “(A) IN GENERAL.—Any eligible entity
13 may submit an application to the President, in
14 such form as the President may require, for a
15 grant under this subsection.

16 “(B) APPLICATION REQUIREMENTS.—An
17 application under this section shall include in-
18 formation relevant to the ranking criteria estab-
19 lished under paragraph (4).

20 “(4) RANKING CRITERIA.—The President shall
21 establish a system for ranking grant applications
22 submitted under this subsection that includes the
23 following criteria:

24 “(A) The adequacy of the financial con-
25 trols and resources of the eligible entity to ad-

1 minister a revolving loan fund in accordance
2 with this title.

3 “(B) The ability of the eligible entity to
4 monitor the use of funds provided to loan re-
5 cipients under this title.

6 “(C) The ability of the eligible entity to en-
7 sure that a remedial action funded by the grant
8 will be conducted under the authority of a State
9 cleanup program that ensures that the remedial
10 action is protective of human health and the en-
11 vironment.

12 “(D) The ability of the eligible entity to
13 ensure that any cleanup funded under this Act
14 will comply with all laws that apply to the
15 cleanup.

16 “(E) The need of the eligible entity for fi-
17 nancial assistance to clean up brownfield sites
18 that are the subject of the application, taking
19 into consideration the financial resources avail-
20 able to the eligible entity.

21 “(F) The ability of the eligible entity to
22 ensure that the applicants repay the loans in a
23 timely manner.

24 “(G) The plans of the eligible entity for
25 using the grant to stimulate economic develop-

1 ment or creation of recreational areas on com-
2 pletion of the cleanup.

3 “(H) The plans of the eligible entity for
4 using the grant to stimulate the availability of
5 other funds for environmental remediation and
6 subsequent redevelopment of the area in which
7 the brownfield facilities are located.

8 “(I) The plans of the eligible entity for
9 using the grant to facilitate a reduction of
10 health and environmental risks.

11 “(J) The plans of the eligible entity for
12 using the grant for remediation and subsequent
13 development that involve the active participa-
14 tion and support of the local community.

15 “(5) MAXIMUM GRANT AMOUNT.—A grant
16 made to an eligible entity under this subsection may
17 not exceed \$1,000,000.

18 “(d) GENERAL PROVISIONS.—

19 “(1) PROHIBITION.—No part of a grant under
20 this section may be used for the payment of pen-
21 alties, fines, or administrative costs.

22 “(2) AUDITS.—The President shall audit an ap-
23 propriate number of grants made under subsections
24 (b) and (c) to ensure that funds are used for the
25 purposes described in this section.

1 “(3) AGREEMENTS.—

2 “(A) TERMS AND CONDITIONS.—Each
3 grant made under this section shall be subject
4 to an agreement that—

5 “(i) requires the eligible entity to
6 comply with all applicable Federal and
7 State laws;

8 “(ii) requires the eligible entity to use
9 the grant exclusively for the purposes spec-
10 ified in subsection (b)(2) or (c)(2);

11 “(iii) in the case of an application by
12 a State under subsection (c)(3), requires
13 payment by the State of a matching share,
14 of at least 50 percent of the amount of the
15 grant, from other sources of funding;

16 “(iv) requires that grants under this
17 section will not supplant State or local
18 funds normally provided for the purposes
19 specified in subsection (b)(2) or (c)(2); and

20 “(v) contains such other terms and
21 conditions as the President determines to
22 be necessary to ensure proper administra-
23 tion of the grants.

24 “(B) LIMITATION.—The President shall
25 not place terms or conditions on grants made

1 under this section other than the terms and
2 conditions specified in subparagraph (A).

3 “(4) LEVERAGING.—An eligible entity that re-
4 ceives a grant under this section may use the funds
5 for part of a project at a brownfield facility for
6 which funding is received from other sources, includ-
7 ing other Federal sources, but the grant shall be
8 used only for the purposes described in subsection
9 (b)(2) or (c)(2).

10 “(e) APPROVAL.—

11 “(1) INITIAL GRANT.—Before the expiration of
12 the fourth quarter of the first fiscal year following
13 the date of the enactment of this section, the Presi-
14 dent shall make grants under this section to eligible
15 entities and States that submit applications, before
16 the expiration of the second quarter of such year,
17 that the President determines have the highest
18 rankings under the ranking criteria established
19 under subsection (b)(4) or (c)(4).

20 “(2) SUBSEQUENT GRANTS.—Beginning with
21 the second fiscal year following the date of enact-
22 ment of this section, the President shall make an an-
23 nual evaluation of each application received during
24 the prior fiscal year and make grants under this sec-
25 tion to eligible entities and States that submit appli-

1 cations during the prior year that the President de-
2 termines have the highest rankings under the rank-
3 ing criteria established under subsection (b)(4) or
4 (c)(4).

5 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
6 is authorized to be appropriated to carry out this section
7 such sums as may be necessary. Such funds shall remain
8 available until expended.”.

9 **TITLE II—EXPENDITURES FROM**
10 **THE HAZARDOUS SUBSTANCE**
11 **SUPERFUND**

12 **SEC. 201. EXPENDITURES FROM THE HAZARDOUS SUB-**
13 **STANCE SUPERFUND.**

14 (a) EXPENDITURES.—Section 111 (42 U.S.C. 9611)
15 is amended—

16 (1) by redesignating subsections (f) and (g) as
17 subsections (g) and (h), respectively; and

18 (2) by striking subsections (a), (b), (c), (d), and
19 (e) and inserting the following:

20 “(a) EXPENDITURES FROM HAZARDOUS SUBSTANCE
21 SUPERFUND.—

22 “(1) SUBSECTION (b) EXPENDITURES.—The
23 following amounts of amounts appropriated to the
24 Hazardous Substance Superfund after January 1,
25 2000, pursuant to section 9507(b) of the Internal

1 Revenue Code of 1986, and of amounts credited
2 under section 9602(b) of such Code with respect to
3 those appropriated amounts, shall be available for
4 the purposes specified in subsection (b):

5 “(A) \$250,000,000 for fiscal year 2000.

6 “(B) \$250,000,000 for fiscal year 2001.

7 “(C) \$250,000,000 for fiscal year 2002.

8 “(D) \$250,000,000 for fiscal year 2003.

9 “(E) \$250,000,000 for fiscal year 2004.

10 Such funds shall remain available until expended.

11 “(2) SUBSECTIONS (c) AND (d) EXPENDI-
12 TURES.—There is authorized to be appropriated
13 from the Hazardous Substance Superfund estab-
14 lished pursuant to section 9507(b) of the Internal
15 Revenue Code of 1986 for the purposes specified in
16 subsections (c) and (d) of this section not more
17 than—

18 “(A) \$1,500,000,000 for fiscal year 2000;

19 “(B) \$1,500,000,000 for fiscal year 2001;

20 “(C) \$1,500,000,000 for fiscal year 2002;

21 “(D) \$1,400,000,000 for fiscal year 2003;

22 and

23 “(E) \$1,350,000,000 for fiscal year 2004.

24 “(b) PAYMENTS RELATED TO CERTAIN REDUC-
25 TIONS, LIMITATIONS, AND EXEMPTIONS.—

1 “(1) FUNDING OF EXEMPT PARTY AND FUND
2 SHARE.—The President may use amounts in the
3 Fund made available by subsection (a)(1) for fund-
4 ing the equitable share of liability attributable to ex-
5 empt parties under section 107(y) and obligations
6 incurred by the President to pay a Fund share or
7 to reimburse parties for costs incurred in excess of
8 the parties’ allocated shares under section 129.

9 “(2) LIMITATIONS.—

10 “(A) FUNDING.—Amounts made available
11 by subsection (a)(1) for the purposes of this
12 subsection shall not exceed the following:

13 “(i) \$250,000,000 for fiscal year
14 2000.

15 “(ii) \$250,000,000 for fiscal year
16 2001.

17 “(iii) \$250,000,000 for fiscal year
18 2002.

19 “(iv) \$250,000,000 for fiscal year
20 2003.

21 “(v) \$250,000,000 for fiscal year
22 2004.

23 “(B) ELIGIBLE COSTS.—No funds made
24 available under paragraph (1) may be used for
25 payment of, or reimbursement for, any portion

1 of attorneys' fees that do not constitute nec-
2 essary costs of response consistent the national
3 contingency plan.

4 “(C) ADDITIONAL PURPOSES.—

5 “(i) IN GENERAL.—If, in any of fiscal
6 years 2000 through 2004, the Adminis-
7 trator does not have available for obliga-
8 tion for the purposes of subsections (c) and
9 (d) the amount specified for the fiscal year
10 in clause (iii), the Administrator, subject
11 to clause (ii), may use funds provided
12 under subsection (a)(1) for such purposes.

13 “(ii) LIMITATION.—The total amount
14 of funds provided under subsection (a)(1)
15 that the Administrator may use for the
16 purposes of subsections (c) and (d) may
17 not exceed the amount specified for the fis-
18 cal year in clause (iii) less the amount
19 which (but for this subparagraph) would
20 be available to the Administrator in such
21 fiscal year for such purposes.

22 “(iii) AMOUNTS.—The amounts speci-
23 fied in this clause are \$1,500,000,000 for
24 each of fiscal years 2000 through 2002,

1 \$1,400,000,000 for fiscal year 2003, and
2 \$1,350,000,000 for fiscal year 2004.

3 “(c) RESPONSE, REMOVAL, AND REMEDIATION.—
4 The President may use amounts in the Fund appropriated
5 under subsection (a)(2) for costs of response, removal, and
6 remediation (and administrative costs directly related to
7 such costs), including the following:

8 “(1) GOVERNMENT RESPONSE COSTS.—Pay-
9 ment of governmental response costs incurred pursu-
10 ant to section 104, including costs incurred pursuant
11 to the Intervention on the High Seas Act (33 U.S.C.
12 1471 et seq.).

13 “(2) PRIVATE RESPONSE COST CLAIMS.—Pay-
14 ment of any claim for necessary response costs in-
15 curred by any other person as a result of carrying
16 out the national contingency plan established under
17 section 105, if such costs are approved under such
18 plan, are reasonable in amount based on open and
19 free competition or fair market value for similar
20 available goods and services, and are certified by the
21 responsible Federal official.

22 “(3) ACQUISITION COSTS UNDER SECTION
23 104(j).—The costs incurred by the President in ac-
24 quiring real estate or interests in real estate under
25 section 104(j) (relating to acquisition of property).

1 “(4) STATE AND LOCAL GOVERNMENT REIM-
2 BURSEMENT.—Reimbursement to States and local
3 governments under section 123; except that during
4 any fiscal year not more than 0.1 percent of the
5 total amount appropriated under subsection (a)(2)
6 may be used for such reimbursements.

7 “(5) CONTRACTS AND COOPERATIVE AGREE-
8 MENTS.—Payment for the implementation of any
9 contract or cooperative agreement under section
10 104(d).

11 “(d) ADMINISTRATION, OVERSIGHT, RESEARCH, AND
12 OTHER COSTS.—The President may use amounts in the
13 Fund appropriated under subsection (a)(2) for the fol-
14 lowing costs (and administrative costs directly related to
15 such costs):

16 “(1) INVESTIGATION AND ENFORCEMENT.—The
17 costs of identifying, investigating, and taking en-
18 forcement action against releases of hazardous sub-
19 stances.

20 “(2) OVERHEAD.—

21 “(A) IN GENERAL.—The costs of providing
22 services, equipment, and other overhead related
23 to the purposes of this Act and section 311 of
24 the Federal Water Pollution Control Act and
25 needed to supplement equipment and services

1 available through contractors and other non-
2 Federal entities.

3 “(B) DAMAGE ASSESSMENT CAPABILITY.—
4 The costs of establishing and maintaining dam-
5 age assessment capability for any Federal agen-
6 cy involved in strike forces, emergency task
7 forces, or other response teams under the Na-
8 tional Contingency Plan.

9 “(3) EMPLOYEE SAFETY PROGRAMS.—The cost
10 of maintaining programs otherwise authorized by
11 this Act to protect the health and safety of employ-
12 ees involved in response to hazardous substance re-
13 leases.

14 “(4) GRANTS FOR TECHNICAL ASSISTANCE.—
15 The cost of grants under section 117(e) (relating to
16 public participation grants for technical assistance).

17 “(5) ATSDR ACTIVITIES.—Any costs incurred
18 in accordance with subsection (m) of this section (re-
19 lating to ATSDR) and section 104(i), including the
20 costs of epidemiologic and laboratory studies, public
21 health assessments, and other activities authorized
22 by section 104(i).

23 “(6) EVALUATION COSTS UNDER PETITION
24 PROVISIONS OF SECTION 105(d).—Costs incurred by
25 the President in evaluation facilities pursuant to pe-

1 titions under section 105(d) (relating to petitions for
2 assessment of release).

3 “(7) CONTRACT COSTS UNDER SECTION
4 104(a)(1).—The costs of contracts or arrangements
5 entered into under section 104(a)(1) to oversee and
6 review the conduct of remedial investigations and
7 feasibility studies undertaken by persons other than
8 the President and the costs of appropriate Federal
9 and State oversight of remedial activities at National
10 Priorities List sites resulting from consent orders or
11 settlement agreements.

12 “(8) RESEARCH, DEVELOPMENT, AND DEM-
13 ONSTRATION COSTS UNDER SECTION 311.—The cost
14 of carrying out section 311 (relating to research, de-
15 velopment, and demonstration).

16 “(9) AWARDS UNDER SECTION 109.—The costs
17 of any awards granted under section 109(d) (relat-
18 ing to providing information concerning violations).

19 “(10) COMPREHENSIVE STATE GROUND WATER
20 PROTECTION PLANS.—Costs of providing assistance
21 to States to develop comprehensive State ground
22 water protection plans to the extent such costs do
23 not exceed \$3,000,000 in a fiscal year.

24 “(e) OTHER LIMITATIONS.—

1 “(1) LIMITATIONS ON PAYMENTS OF CLAIMS.—
2 Claims against or presented to the Fund shall not
3 be valid or paid in excess of the total unobligated
4 balance in the Fund at any one time. Such claims
5 become valid and are payable only when additional
6 money is collected, appropriated, or otherwise added
7 to the Fund. Should the total claims outstanding at
8 any time exceed the current balance of the Fund,
9 the President shall pay such claims, to the extent
10 authorized under this section, in full in the order in
11 which they were finally determined.

12 “(2) REMEDIAL ACTIONS AT FEDERALLY
13 OWNED FACILITIES.—No money in the Fund shall
14 be available for costs of remedial action, other than
15 costs specified in subsection (d), with respect to fed-
16 erally owned facilities; except that money in the
17 Fund shall be available for the provision of alter-
18 native water supplies (including the reimbursement
19 of costs incurred by a municipality) in any case in-
20 volving ground water contamination outside the
21 boundaries of a federally owned facility in which the
22 federally owned facility is not the only potentially re-
23 sponsible party.

24 “(3) REMEDIAL ACTIONS AT FACILITIES NOT
25 LISTED ON NPL.—No money in the Fund shall be

1 available for response actions that are not removal
2 actions under section 101(23) with respect to any
3 facility that is not listed on the National Priorities
4 List.”.

5 (b) ADDITIONAL AMENDMENTS.—

(1) SECTION 111.—Section 111 (42 U.S.C. 9611) is further amended by striking subsections (j) and (n).

9 (2) SECTION 107.—Section 107 (42 U.S.C.
10 9607) is amended by striking subsection (k).

11 (c) CONFORMING AMENDMENTS.—Section 112 (42
12 U.S.C. 9612) is amended—

(1) in subsection (a) by striking “111(a)” and inserting ““111(c)””; and

15 (2) by striking subsection (f).

16 SEC. 202. AUTHORIZATION OF APPROPRIATIONS FROM
17 GENERAL REVENUES.

18 (a) AUTHORIZATION.—Section 111(p)(1) (42 U.S.C.
19 9611(p)(1)) is amended to read as follows:

20 “(1) IN GENERAL.—There is authorized to be
21 appropriated, out of any money in the Treasury not
22 otherwise appropriated, to the Hazardous Substance
23 Superfund such sums as may be necessary for each
24 of fiscal years 2000 through 2004.”.

1 (b) REPEAL OF DUPLICATIVE AUTHORIZATION.—
2 Subsection (b) of section 517 of the Superfund Amend-
3 ments and Reauthorization Act of 1986 (26 U.S.C. 9507
4 note) is hereby repealed.

5 (c) CONFORMING AMENDMENT.—Section 9507(a)(2)
6 of the Internal Revenue Code of 1986 is amended by strik-
7 ing “section 517(b) of the Superfund Revenue Act of
8 1986” and inserting “section 111(p) of the Comprehensive
9 Environmental Response, Compensation, and Liability Act
10 of 1980 (42 U.S.C. 9611(p))”.

11 **SEC. 203. COMPLETION OF NATIONAL PRIORITIES LIST.**

12 (a) STUDY OF 10-YEAR FUNDING NEEDS FOR IM-
13 PLEMENTING CERCLA.—There is authorized to be ap-
14 propriated \$1,000,000 for an independent analysis of the
15 projected 10-year costs to the Environmental Protection
16 Agency of implementing the programs authorized by the
17 Comprehensive Environmental Response, Compensation,
18 and Liability Act of 1980. Such analysis shall include esti-
19 mates of annual and cumulative costs over the next 10
20 years associated with administering such Act by the Envi-
21 ronmental Protection Agency, shall identify sources of un-
22 certainty in the estimates, and shall be completed by Jan-
23 uary 1, 2001.

24 (b) BREAKDOWN OF COSTS.—The study referred to
25 in subsection (b) shall include estimates of the following:

1 (1) Costs for completion of all non-Federal fa-
2 cilities currently on the National Priorities List.

3 (2) Costs for completion of all Federal facilities
4 currently on the National Priorities List.

5 (3) Costs associated with those non-Federal
6 sites which the Administrator of the Environmental
7 Protection Agency expects to be added to the Na-
8 tional Priorities List over the next 10 years.

9 (4) Costs associated with those Federal facili-
10 ties which the Administrator expects to be added to
11 the National Priorities List over the next 10 years.

12 (5) Costs for operations and maintenance at fa-
13 cilities currently on, or anticipated to be added over
14 the next 10 years to, the National Priorities List.

15 (6) Costs associated with reviews of remedies
16 under section 121(c) of the Comprehensive Environ-
17 mental Response, Compensation, and Liability Act
18 of 1980, and any follow-up activities.

19 (7) Costs for removal activities.

20 (c) ORGANIZATIONS TO CONDUCT STUDY.—The cost
21 analysis under subsection (a) shall be conducted by a neu-
22 tral, nongovernmental organization with expertise in the
23 Comprehensive Environmental Response, Compensation,
24 and Liability Act of 1980. In conducting the analysis, the
25 nongovernmental organization shall collect relevant infor-

1 mation from experts and other interested persons, includ-
2 ing experts in public budgeting and accounting.

3 **TITLE III—LIABILITY REFORM**

4 **SEC. 301. LIABILITY RELIEF FOR INNOCENT PARTIES.**

5 (a) AMENDMENTS.—Section 107(b) (42 U.S.C.
6 9607(b)) is amended—

7 (1) by redesignating paragraphs (1) through
8 (4) as subparagraphs (A) through (D), respectively;

9 (2) by striking “(b) There shall be” and insert-
10 ing the following:

11 “(b) DEFENSES TO LIABILITY.—

12 “(1) IN GENERAL.—There shall be”; and

13 (3) by adding at the end the following:

14 “(2) LIABILITY RELIEF FOR INNOCENT PAR-
15 TIES.—

16 “(A) RECIPIENTS OF PROPERTY BY IN-
17 HERITANCE OR BEQUEST.—There shall be no li-
18 ability under subsection (a) for a person whose
19 liability is based solely on the person’s status as
20 an owner or operator of a facility or vessel and
21 who can establish by a preponderance of the
22 evidence that the person meets the require-
23 ments of paragraph (4) and that the person ac-
24 quired the property by inheritance or bequest.

1 “(B) RECIPIENTS OF PROPERTY BY CHARITABLE DONATION.—Liability under subsection
2 (a) shall be limited to the lesser of the fair market value of the facility or vessel and the actual
3 proceeds of the sale of the facility for a person
4 whose liability is based solely on the person’s
5 status as an owner or operator of the facility or
6 vessel and who can establish by a preponderance of the evidence that the person meets the
7 requirements of paragraph (4) and that the
8 person holding title, either outright or in trust,
9 to the vessel or facility is an organization described in section 501(c)(3) of the Internal Revenue
10 Code of 1986 and exempt from tax under
11 section 501(a) of such Code and holds such title
12 as a result of a charitable donation that qualifies under section 170, 2055, or 2522 of such
13 Code.
14 Code.

15 “(C) OWNERS OR OPERATORS OF RIGHTS-OF-WAY.—There shall be no liability under subsection
16 (a) for a person whose liability is based
17 solely on ownership or operation of a road,
18 street, or other right-of-way or public transportation route (other than railroad rights-of-way
19 and railroad property) over which hazardous
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1 substances are transported if such person can
2 establish by a preponderance of the evidence
3 that the person did not, by any act or omission,
4 cause or contribute to the release or threatened
5 release.

6 “(D) RAILROAD OWNERS OR OPERATORS
7 OF SPUR TRACK.—There shall be no liability
8 under subsection (a) for a person whose liability
9 is based solely on the status of the person as
10 a railroad owner or railroad operator of a spur
11 track, including a spur track over land subject
12 to an easement, to a facility that is owned or
13 operated by a person that is not affiliated with
14 the railroad owner or operator if the railroad
15 owner or operator can establish by a preponder-
16 ance of the evidence that—

17 “(i) the spur track provides access to
18 a main line or branch line track that is
19 owned or operated by the railroad owner or
20 operator;

21 “(ii) the spur track is 10 miles long or
22 less; and

23 “(iii) the railroad owner or operator
24 did not cause or contribute to a release or
25 threatened release of the hazardous sub-

1 stances for which liability is alleged under
2 subsection (a).

3 “(E) CONSTRUCTION CONTRACTORS.—

4 There shall be no liability under subsection (a)
5 for a person who is a construction contractor
6 (other than a response action contractor cov-
7 ered by section 119) if such person can estab-
8 lish by a preponderance of the evidence that—

9 “(i) the person’s liability is based sole-
10 ly on construction activities that were spe-
11 cifically directed by and carried out in ac-
12 cordance with a contract with an owner or
13 operator of the facility;

14 “(ii) the person did not know or have
15 reason to know of the presence of haz-
16 ardous substances at the facility concerned
17 before beginning construction activities;
18 and

19 “(iii) the person exercised appropriate
20 care with respect to the hazardous sub-
21 stances discovered in the course of per-
22 forming the construction activity, including
23 precautions against foreseeable acts of
24 third parties, taking into consideration the
25 characteristics of such hazardous sub-

1 stances, in light of all relevant facts, cir-
2 cumstances, and generally accepted good
3 commercial and customary standards and
4 practices at the time of the person's acts
5 or omissions.

6 “(3) APPROPRIATE CARE.—

7 “(A) SITE-SPECIFIC BASIS.—The deter-
8 mination whether or not a person has exercised
9 appropriate care with respect to hazardous sub-
10 stances within the meaning of paragraph (4)(C)
11 shall be made on a site-specific basis taking
12 into consideration the characteristics of the haz-
13 ardous substances, in light of all relevant facts,
14 circumstances, and generally accepted good
15 commercial and customary standards and prac-
16 tices at the time of the defendant's acts or
17 omissions.

18 “(B) SAFE HARBOR.—A person shall be
19 deemed to have exercised appropriate care with-
20 in the meaning of paragraph (4)(C) if—

21 “(i) the person took reasonable steps
22 to stop any continuing release, prevent any
23 threatened future release, and prevent or
24 limit human or natural resource exposure

1 to any previously released hazardous sub-
2 stance, or

3 “(ii) in any case in which the release
4 or threatened release of hazardous sub-
5 stances is the subject of a response action
6 by persons authorized to conduct the re-
7 sponse action at the facility or vessel, the
8 person provides access for and all reason-
9 able cooperation with the response action.

10 “(4) REQUIREMENTS.—The requirements re-
11 ferred to in paragraph (2)(A) and (B) are that a
12 person’s liability is based solely on the person’s sta-
13 tus as an owner or operator of a facility or vessel
14 and that the person can establish by a preponder-
15 ance of the evidence that—

16 “(A) the person acquired the facility or
17 vessel after the disposal or placement of the
18 hazardous substances for which liability is al-
19 leged under subsection (a);

20 “(B) the person did not, by any act or
21 omission, cause or contribute to the release or
22 threatened release of such hazardous sub-
23 stances; and

24 “(C) the person exercised appropriate care
25 with respect to such hazardous substances.

1 “(5) TREATMENT OF NON-LIABLE PARTIES.—

2 The Administrator shall seek to minimize the admin-
3 istrative and legal burdens on parties that are not
4 liable pursuant to this section. To the extent prac-
5 ticable, the Administrator shall—

6 “(A) inform such parties that they are ex-
7 empted from liability pursuant to this section,
8 and offer them written assurances establishing
9 their exempt status; and

10 “(B) eliminate or minimize any need for
11 such parties to retain legal counsel in connec-
12 tion with administrative or legal proceedings
13 concerning the facility at issue.”.

14 (b) CONFORMING AMENDMENTS.—(1) Section
15 101(35) (42 U.S.C. 9601(35)) is amended by striking
16 “section 107(b)(3)” each place it appears and inserting
17 “section 107(b)(1)(C)”.

18 (2) Section 119(b)(1) (42 U.S.C. 9619(b)(1)) is
19 amended by striking “section 107(b)(3)” and inserting
20 “section 107(b)(1)(C)”.

21 **SEC. 302. CLARIFICATIONS OF CERTAIN LIABILITY.**

22 (a) AMOUNT OF LIABILITY.—Section 107(c)(3) (42
23 U.S.C. 9607(c)(3)) is amended in the first sentence by
24 striking “at least equal to,” and all that follows through

1 the end of the sentence and inserting “up to three times
2 the amount of such response costs.”.

3 (b) CLARIFICATION OF COMMON CARRIER LIABIL-
4 ITY.—Section 107(b)(1)(C), as so redesignated by section
5 301(a) of this Act, is amended by striking “from a pub-
6 lished tariff and acceptance for” and inserting “exclusively
7 from a contract for”.

8 (c) OTHER CLARIFICATIONS.—Section 107(a) (42
9 U.S.C. 9607(a)) is amended as follows:

10 (1) In paragraph (1), by striking “and” and in-
11 serting “or”.

12 (2) In paragraph (4)(B)—

13 (A) by striking “other” both places it ap-
14 pears; and

15 (B) by inserting “, other than the United
16 States, a State, or an Indian tribe,” before the
17 phrase “consistent with the national contin-
18 gency plan”.

19 (3) In paragraph (4), by striking “by such per-
20 son,” and all that follows through “shall be liable
21 for—” and inserting in lieu thereof the following:

22 “by such person—

23 from which there is a release, or a threatened release, that
24 causes the incurrence of response costs, of a hazardous
25 substance, shall be liable for—”.

1 (4) By designating the text beginning with
2 “The amounts recoverable” and ending with “this
3 subsection commences.” as paragraph (5) and align-
4 ing the margin of such text with paragraph (4).

5 **SEC. 303. LIABILITY RELIEF FOR SMALL BUSINESSES, MU-**
6 **NICIPAL SOLID WASTE, SEWAGE SLUDGE, MU-**
7 **NICIPAL OWNERS AND OPERATORS, AND DE**
8 **MICROMIS CONTRIBUTORS.**

9 (a) LIMITATION ON LIABILITY FOR SMALL BUSI-
10 NESSES.—Section 107 (42 U.S.C. 9607) is further
11 amended by adding at the end the following:

12 “(t) LIMITATION ON LIABILITY FOR SMALL BUSI-
13 NESSES.—

14 “(1) IN GENERAL.—With respect to actions
15 taken before September 29, 1999, no small business
16 concern shall be liable under subsection (a)(3) or
17 (a)(4) for response costs or damages at a facility or
18 vessel on the National Priorities List.

19 “(2) LIMITATION.—Paragraph (1) shall not
20 apply to an action brought by the President against
21 a small business concern if the hazardous substances
22 attributable to the small business concern have con-
23 tributed, or contribute, significantly to the costs of
24 the response action at the facility.

1 “(3) SMALL BUSINESS CONCERN DEFINED.—In
2 this subsection, the term ‘small business concern’
3 means a business entity that on average over the
4 previous 3 years preceding the date of notification
5 by the President that the business entity is a poten-
6 tially responsible party—

7 “(A) has no more than 75 full-time em-
8 ployees or the equivalent thereof; and

9 “(B) has \$3,000,000 or less in gross reve-
10 nues.”.

11 (b) LIABILITY RELIEF FOR MUNICIPAL SOLID
12 WASTE AND SEWAGE SLUDGE.—Section 107 (42 U.S.C.
13 9607) is further amended by adding at the end the fol-
14 lowing:

15 “(u) LIABILITY EXEMPTIONS AND LIMITATIONS FOR
16 MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.—

17 “(1) PRE-ENACTMENT ACTIVITIES.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), no person shall be liable
20 under subsection (a)(3) or (a)(4) for response
21 costs or damages at a landfill facility on the
22 National Priorities List to the extent that the
23 person arranged or transported municipal solid
24 waste or municipal sewage sludge prior to the

1 date of enactment of this paragraph for dis-
2 posal at the landfill facility.

3 “(B) EXCEPTION.—Notwithstanding sub-
4 paragraph (A), if the President determines that
5 a person transported material containing haz-
6 ardous substances to a landfill facility that has
7 contributed, or contributes, significantly to the
8 costs of response at the facility and such person
9 is engaged in the business of transporting waste
10 materials, such person may be liable under sub-
11 section (a)(4). The liability of such person shall
12 be subject to the aggregate limits on liability
13 for municipal solid waste set forth in paragraph
14 (2). Any determination of such person’s equi-
15 table share of response costs shall be deter-
16 mined on the basis of such person’s equitable
17 share of the aggregate amount of response costs
18 attributable to municipal solid waste under
19 paragraph (2).

20 “(2) POST-ENACTMENT ACTIVITIES.—

21 “(A) IN GENERAL.—To the extent that a
22 person or group of persons is liable under sub-
23 section (a)(3) or (a)(4) for arranging or trans-
24 porting municipal solid waste or municipal sew-
25 age sludge for disposal at a landfill facility on

1 the National Priorities List on or after the date
2 of enactment of this paragraph, and is not ex-
3 empt from liability under paragraph (3), the
4 total aggregate liability for all such persons or
5 groups of persons for response costs at such a
6 landfill facility shall not exceed 10 percent of
7 such costs. With respect to actions taken on or
8 after the date that is 36 months after the date
9 of enactment of this paragraph, this limitation
10 on liability shall apply only at a landfill facility
11 within a municipality that has instituted or par-
12 ticipates in a qualified household hazardous
13 waste collection program.

14 “(B) EXPEDITED SETTLEMENTS.—The
15 President may offer a person subject to a limi-
16 tation on liability under subparagraph (A) an
17 expedited settlement based on the average unit
18 cost of remediating municipal solid waste and
19 municipal sewage sludge in landfills in lieu of
20 the aggregate 10 percent limitation on liability
21 provided by subparagraph (A).

22 “(3) SPECIAL RULE.—No person shall be liable
23 under subsection (a)(3) or (a)(4) for response costs
24 or damages at a landfill facility on the National Pri-
25 orities List to the extent that—

1 “(A) the materials that the person ar-
2 ranged or transported for disposal consist of
3 municipal solid waste; and

4 “(B) the person is—

5 “(i) an owner, operator, or lessee of
6 residential property from which all of the
7 person’s municipal solid waste was gen-
8 erated with respect to the facility;

9 “(ii) a business entity that employs no
10 more than 100 paid individuals and is a
11 small business concern as defined under
12 the Small Business Act (15 U.S.C. 631 et
13 seq.) from which was generated all of the
14 entity’s municipal solid waste with respect
15 to the facility; or

16 “(iii) an organization described in sec-
17 tion 501(c)(3) of the Internal Revenue
18 Code of 1986 and exempt from tax under
19 section 501(a) of such Code if such organi-
20 zation employs no more than 100 paid in-
21 dividuals at the location from which was
22 generated all of the municipal solid waste
23 attributable to the organization with re-
24 spect to the facility.

1 “(4) MIXED WASTES.—Liability for wastes that
2 do not fall within the definition of municipal solid
3 waste under paragraph (5)(A) and are collected and
4 disposed of with municipal solid wastes shall be gov-
5 erned by section 107(a) and any applicable exemp-
6 tions or limitations on liability without regard to the
7 wastes covered by paragraph (5)(A).

8 “(5) DEFINITIONS.—In this section, the fol-
9 lowing definitions apply:

10 “(A) MUNICIPAL SOLID WASTE.—The term
11 ‘municipal solid waste’ means waste materials
12 generated by households, including single and
13 multifamily residences, and hotels and motels,
14 and waste materials generated by commercial,
15 institutional, and industrial sources, to the ex-
16 tent that such materials—

17 “(i) are essentially the same as waste
18 materials normally generated by house-
19 holds, or

20 “(ii) are collected and disposed of
21 with other municipal solid waste, and con-
22 tain hazardous substances that would qual-
23 ify for the de micromis exemption under
24 section 107(w).

1 The term includes food and yard waste, paper,
2 clothing, appliances, consumer product pack-
3 aging, disposable diapers, office supplies, cos-
4 metics, glass and metal food containers, wooden
5 pallets, cardboard, elementary or secondary
6 school science laboratory waste, and household
7 hazardous waste. The term does not include
8 combustion ash generated by resource recovery
9 facilities or municipal incinerators; solid waste
10 from the extraction, beneficiation, and proc-
11 essing of ores and minerals; or waste from
12 manufacturing or processing operations (includ-
13 ing pollution control) that is not essentially the
14 same as waste normally generated by house-
15 holds.

16 “(B) MUNICIPAL SEWAGE SLUDGE.—The
17 term ‘municipal sewage sludge’ means solid,
18 semisolid, or liquid residue removed during the
19 treatment of municipal waste water, domestic
20 sewage, or other waste water at or by (i) a pub-
21 licly owned treatment works, (ii) a federally
22 owned treatment works, or (iii) a treatment
23 works that, without regard to ownership, would
24 be considered to be a publicly owned treatment

1 works and is principally treating municipal
2 waste water or domestic sewage.

3 “(v) LIMITATION ON LIABILITY FOR MUNICIPAL
4 OWNERS AND OPERATORS.—

5 “(1) AGGREGATE LIABILITY OF SMALL MUNICI-
6 PALITIES.—With respect to a facility that received
7 municipal solid waste, that was proposed for listing
8 on the National Priorities List before September 29,
9 1999, that is or was owned or operated by munici-
10 palities with a population of less than 100,000 ac-
11 cording to the 1990 census, and that is not subject
12 to the criteria for solid waste landfills published
13 under subtitle D of the Solid Waste Disposal Act
14 (42 U.S.C. 6941 et seq.) at part 258 of title 40,
15 Code of Federal Regulations (or a successor regula-
16 tion), the aggregate liability of such municipalities
17 for response costs incurred on or after September
18 29, 1999, shall be the lesser of—

19 “(A) 10 percent of the total amount of re-
20 sponse costs at the facility; or

21 “(B) the costs of compliance with the re-
22 quirements of such subtitle for the facility (as
23 if the facility had continued to accept municipal
24 solid waste through January 1, 1997).

1 “(2) AGGREGATE LIABILITY OF LARGE MUNICI-
2 PALITIES.—With respect to a facility that received
3 municipal solid waste, that was proposed for listing
4 on the National Priorities List before September 29,
5 1999, that is or was owned or operated by munici-
6 palities with a population of 100,000 or more ac-
7 cording to the 1990 census, and that is not subject
8 to the criteria for solid waste landfills published
9 under subtitle D of the Solid Waste Disposal Act
10 (42 U.S.C. 6941 et seq.) at part 258 of title 40,
11 Code of Federal Regulations (or a successor regula-
12 tion), the aggregate liability of such municipalities
13 for response costs incurred on or after September
14 29, 1999, shall be the lesser of—

15 “(A) 20 percent of the total amount of re-
16 sponse costs at the facility; or

17 “(B) the costs of compliance with the re-
18 quirements of such subtitle for the facility (as
19 if the facility had continued to accept municipal
20 solid waste through January 1, 1997).”.

21 (c) DE MICROMIS EXEMPTION.—Section 107 (42
22 U.S.C. 9607) is further amended by adding at the end
23 the following:

24 “(w) DE MICROMIS EXEMPTION.—

1 “(1) IN GENERAL.—In the case of a facility or
2 vessel listed on the National Priorities List, no per-
3 son shall be liable under subsection (a)(3) or (a)(4)
4 if no more than 110 gallons or 200 pounds of mate-
5 rials containing hazardous substances at the facility
6 or vessel is attributable to such person, and the acts
7 on which liability is based took place before the date
8 of enactment of this subsection.

9 “(2) EXCEPTION.—Paragraph (1) shall not
10 apply in a case in which the President determines
11 that the material described in paragraph (1) has
12 contributed, or contributes, significantly to the costs
13 of response at the facility.”.

14 (d) INELIGIBILITY FOR EXEMPTIONS OR LIMITA-
15 TIONS.—Section 107 (42 U.S.C. 9607) is further amended
16 by adding at the end the following:

17 “(x) INELIGIBILITY FOR EXEMPTIONS OR LIMITA-
18 TIONS.—

19 “(1) IMPEDING RESPONSE OR RESTORATION.—
20 The exemptions and limitations set forth in sub-
21 sections (t), (u), (v), and (w) and sections 114(c)
22 and 128 shall not apply to any person with respect
23 to a facility if such person impedes the performance
24 of a response action or natural resource restoration
25 at the facility.

1 “(2) FAILURE TO RESPOND TO INFORMATION
2 REQUEST.—The exemptions and limitations set forth
3 in subsections (t), (u), (v), and (w) and sections
4 114(c) and 128 shall not apply to any person who—

5 “(A) willfully fails to submit a complete
6 and timely response to an information request
7 under section 104(e); or

8 “(B) knowingly makes any false or mis-
9 leading material statement or representation in
10 any such response.

11 “(3) FAILURE TO PROVIDE COOPERATION AND
12 FACILITY ACCESS.—The limitation set forth in sub-
13 section (v) shall not apply to any owner or operator
14 of a facility who does not provide all reasonable co-
15 operation and facility access to persons authorized to
16 conduct response actions at the facility.”.

17 (e) EXEMPT PARTY FUNDING; CONCLUDED AC-
18 TIONS; OVERSIGHT COSTS.—Section 107 (42 U.S.C.
19 9607) is further amended by adding at the end the fol-
20 lowing:

21 “(y) EXEMPT PARTY FUNDING.—

22 “(1) EXEMPT PARTY FUNDING.—Except as
23 provided in paragraph (2), the equitable share of li-
24 ability under section 107(a) for any release or
25 threatened release of a hazardous substance from a

1 facility or vessel on the National Priorities List that
2 is extinguished through an exemption or limitation
3 on liability under subsection (t), (u), or (v) of this
4 section, section 114(c), or section 128 shall be trans-
5 ferred to and assumed by the Trust Fund.

6 “(2) CERTAIN MSW GENERATORS.—Paragraph
7 (1) shall not apply to the equitable share of liability
8 of any person who would have been liable under sub-
9 section (a)(3) or (4) but for the exemption from li-
10 ability under subsection (u)(3).

11 “(3) SOURCE OF FUNDS.—Payments made by
12 the Trust Fund or work performed on behalf of the
13 Trust Fund to meet the obligations under paragraph
14 (1) shall be funded from amounts made available by
15 section 111(a)(1).

16 “(z) EFFECT ON CONCLUDED ACTIONS.—The ex-
17 emptions from, and limitations on, liability provided under
18 subsections (t), (u), (v), and (w) and sections 114(c) and
19 128 shall not affect any settlement or judgment approved
20 by a United States District Court not later than 30 days
21 after the date of enactment of this subsection or any ad-
22 ministrative action against a person otherwise covered by
23 such exemption or limitation that becomes effective not
24 later than 30 days after such date of enactment.

1 “(aa) LIMITATION ON RECOVERY OF OVERSIGHT
2 COSTS.—

3 “(1) IN GENERAL.—Costs of oversight of a re-
4 sponse action shall not be recoverable under this sec-
5 tion from a person referred to in paragraph (2) to
6 the extent that such costs exceed 10 percent of the
7 costs of the response action.

8 “(2) ACCOUNTING OF RESPONSE COSTS.—Para-
9 graph (1) shall apply only to a person who provides
10 the Administrator with an accounting of the direct
11 and indirect costs that the person incurred in con-
12 ducting the response action. The Administrator may
13 require an independent audit of the costs from such
14 person.”.

15 **SEC. 304. LIABILITY OF RESPONSE ACTION CONTRACTORS.**

16 (a) EXTENSION OF NEGLIGENCE STANDARD.—Sub-
17 section (a) of section 119 (42 U.S.C. 9619(a)) is amended
18 as follows:

19 (1) In paragraph (1) by striking “title or under
20 any other Federal law” and inserting “title, under
21 any other Federal law, or under the law of any State
22 or political subdivision of a State”.

23 (2) By adding at the end of paragraph (1) the
24 following: “Notwithstanding the preceding sentence,
25 this section shall not apply in determining the liabil-

1 ity of a response action contractor under the law of
2 any State or political subdivision thereof if the State
3 has enacted a law determining the liability of a re-
4 sponse action contractor.”.

5 (3) By adding at the end of paragraph (2) the
6 following: “Such conduct shall be evaluated based on
7 the generally accepted standards and practices in ef-
8 fect at the time and place that the conduct oc-
9 curred.”.

10 (b) EXTENSION OF INDEMNIFICATION AUTHOR-
11 ITY.—Section 119(c) (42 U.S.C. 9619(c)) is amended by
12 adding at the end of paragraph (1) the following: “Any
13 such agreement may apply to claims for negligence arising
14 under Federal law or under the law of any State or polit-
15 ical subdivision of a State.”.

16 (c) INDEMNIFICATION FOR THREATENED RE-
17 LEASES.—Section 119(c)(5) (42 U.S.C. 9619(c)(5)) is
18 amended in subparagraph (A) by inserting “or threatened
19 release” after “release” each place it appears.

20 **SEC. 305. AMENDMENTS TO SECTION 122.**

21 (a) FINAL COVENANTS.—Section 122(f) (42 U.S.C.
22 9622(f)) is amended as follows:

23 (1) By striking paragraph (1) and inserting the
24 following:

1 “(1) FINAL COVENANTS.—The President shall
2 offer potentially responsible parties who enter into
3 settlement agreements that are in the public interest
4 a final covenant not to sue concerning any liability
5 to the United States under this Act, including a cov-
6 enant with respect to future liability, for response
7 actions or response costs addressed in the settle-
8 ment, if all of the following conditions are met:

9 “(A) The settling party agrees to perform,
10 or there are other adequate assurances of the
11 performance of, a final remedial action author-
12 ized by the Administrator for the release or
13 threat of release that is the subject of the set-
14 tlement.

15 “(B) The settlement agreement has been
16 reached prior to the commencement of litigation
17 against the settling party under section 106 or
18 107 of this Act with respect to this facility.

19 “(C) The settling party waives all contribu-
20 tion rights against other potentially responsible
21 parties at the facility.

22 “(D) The settling party (other than a
23 small business) pays a premium that com-
24 pensates for the risks of remedy failure; future
25 liability resulting from unknown conditions; and

1 unanticipated increases in the cost of any
2 uncompleted response action, unless the settling
3 party is performing the response action. The
4 President shall have sole discretion to deter-
5 mine the appropriate amount of any such pre-
6 mium, and such determinations are committed
7 to the President's discretion. The President has
8 discretion to waive or reduce the premium pay-
9 ment for persons who demonstrate an inability
10 to pay such a premium.

11 “(E) The remedial action does not rely on
12 institutional controls to ensure continued pro-
13 tection of human health and the environment.

14 “(F) The settlement is otherwise accept-
15 able to the United States.”.

16 (2) In paragraph (2) by striking “remedial”
17 each place it appears and inserting “response”.

18 (3) By striking paragraph (3) and inserting the
19 following:

20 “(3) DISCRETIONARY COVENANTS.—For settle-
21 ments under this Act for which covenants under
22 paragraph (1) are not available, the President may,
23 in his discretion, provide any person with a covenant
24 not to sue concerning any liability to the United
25 States under this Act, if the covenant not to sue is

1 in the public interest. Such covenants shall be sub-
2 ject to the requirements of paragraph (5). The
3 President may include any conditions in such cov-
4 enant not to sue, including the additional condition
5 referred to in paragraph (5). In determining whether
6 such conditions or covenants are in the public inter-
7 est, the President shall consider the nature and
8 scope of the commitment by the settling party under
9 the settlement, the effectiveness and reliability of the
10 response action, the nature of the risks remaining at
11 the facility, the strength of evidence, the likelihood
12 of cost recovery, the reliability of any response ac-
13 tion or actions to restore, replace, or acquire the
14 equivalent of injured natural resources, the extent to
15 which performance standards are included in the
16 order or decree, the extent to which the technology
17 used in the response action is demonstrated to be ef-
18 fective, and any other factors relevant to the protec-
19 tion of human health and the environment.”.

20 (4) By striking paragraph (4) and redesign-
21 ating paragraphs (5) and (6) as paragraphs (4)
22 and (5), respectively.

23 (5) In subparagraph (A) of paragraph (5) (as
24 so redesignated)—

1 (A) by striking “remedial” the first place
2 it appears and inserting “response”;

3 (B) by striking “paragraph (2)” and in-
4 serting “paragraph (1) or (2)”;

5 (C) by striking “de minimis settlements”
6 and inserting “de minimis and other expedited
7 settlements pursuant to subsection (g) of this
8 section”; and

9 (D) by striking “the President certifies
10 under paragraph (3) that remedial action has
11 been completed at the facility concerned”, and
12 inserting “that the response action that is the
13 subject of the settlement agreement is se-
14 lected”.

15 (6) In subparagraph (B) of paragraph (5) (as
16 so redesignated)—

17 (A) by striking “In extraordinary cir-
18 cumstances, the” and inserting “The”;

19 (B) by striking “those referred to in para-
20 graph (4) and”;

21 (C) by striking “if other terms,” and in-
22 serting “, if the agreement containing the cov-
23 enant not to sue provides for payment of a pre-
24 mium to address possible remedy failure or any

1 releases that may result from unknown condi-
2 tions, and if other terms,”; and

3 (D) by adding at the end the following:
4 “The President may waive or reduce the pre-
5 mium payment for persons who demonstrate an
6 inability to pay such a premium.”.

7 (b) EXPEDITED FINAL SETTLEMENTS.—Section 122
8 (42 U.S.C. 6922) is further amended as follows:

9 (1) In subsection (g) by striking “(g)” and all
10 that follows through the period at the end of para-
11 graph (1) and inserting the following:

12 “(g) EXPEDITED FINAL SETTLEMENT.—

13 “(1) PARTIES ELIGIBLE FOR EXPEDITED SET-
14 TLEMENT.—The President shall, as promptly as pos-
15 sible, offer to reach a final administrative or judicial
16 settlement with potentially responsible parties who,
17 in the judgment of the President, meet the following
18 conditions for eligibility for an expedited settlement
19 in subparagraph (A) or (B):

20 “(A) The potentially responsible party’s in-
21 dividual contribution to the release of haz-
22 ardous substances at the facility as an owner or
23 operator, arranger for disposal, or transporter
24 for disposal is de minimis. The contribution of
25 hazardous substance to a facility by a poten-

1 tially responsible party is de minimis if both of
2 the following conditions are met:

3 “(i) The contribution of materials
4 containing hazardous substances that the
5 potentially responsible party arranged or
6 transported for treatment or disposal, or
7 that were treated or disposed during the
8 potentially responsible party’s period of
9 ownership or operation of the facility, is
10 minimal in comparison to the total volume
11 of materials containing hazardous sub-
12 stances at the facility. Such individual con-
13 tribution is presumed to be minimal if it is
14 not more than 1 percent of the total vol-
15 ume of such materials, unless the Adminis-
16 trator identifies a different threshold based
17 on site-specific factors.

18 “(ii) Such hazardous substances do
19 not present toxic or other hazardous ef-
20 fects that are significantly greater than
21 those of other hazardous substances at the
22 facility.

23 “(B)(i) The potentially responsible party is
24 a natural person, a small business, or a munici-
25 pality and can demonstrate to the United

1 States an inability or limited ability to pay re-
2 sponse costs. A party who enters into a settle-
3 ment pursuant to this subparagraph shall be
4 deemed to have resolved its liability under this
5 Act to the United States for all matters ad-
6 dressed in the settlement.

7 “(ii) For purposes of this subparagraph,
8 the following provisions apply:

9 “(I) In the case of a small business,
10 the President shall take into consideration
11 the ability to pay of the business, if re-
12 quested by the business. The term ‘ability
13 to pay’ means the President’s reasonable
14 expectation of the ability of the small busi-
15 ness to pay its total settlement amount
16 and still maintain its basic business oper-
17 ations. Such consideration shall include the
18 business’s overall financial condition and
19 demonstrable constraints on its ability to
20 raise revenues.

21 “(II) Any business requesting such
22 consideration shall promptly provide the
23 President with all relevant information
24 needed to determine the business’s ability
25 to pay.

1 “(III) If the President determines
2 that a small business is unable to pay its
3 total settlement amount immediately, the
4 President shall consider alternative pay-
5 ment methods as may be necessary or ap-
6 propriate. The methods to be considered
7 may include installment payments to be
8 paid during a period of not to exceed 10
9 years and the provision of in-kind services.

10 “(iii) Any municipality which is a poten-
11 tially responsible party may submit for consid-
12 eration by the President an evaluation of the
13 potential impact of the settlement on essential
14 services that the municipality must provide, and
15 the feasibility of making delayed payments or
16 payments over time. If a municipality asserts
17 that it has additional environmental obligations
18 besides its potential liability under this Act,
19 then the municipality may create a list of the
20 obligations, including an estimate of the costs
21 of complying with such obligations.

22 “(iv) Any municipality which is a poten-
23 tially responsible party may establish an inabil-
24 ity to pay through an affirmative showing that

1 such payment of its liability under this Act
2 would either—

3 “(I) create a substantial demonstrable
4 risk that the municipality would default on
5 existing debt obligations, be forced into
6 bankruptcy, be forced to dissolve, or be
7 forced to make budgetary cutbacks that
8 would substantially reduce current levels of
9 protection of public health and safety; or

10 “(II) necessitate a violation of legal
11 requirements or limitations of general ap-
12 plicability concerning the assumption and
13 maintenance of fiscal municipal obliga-
14 tions.

15 “(v) This subparagraph does not limit or
16 affect the President’s authority to evaluate any
17 person’s ability to pay or to enter into settle-
18 ments with any person based on that person’s
19 inability to pay.”.

20 (2) By striking paragraphs (2) and (3) of sub-
21 section (g) and inserting the following:

22 “(2) BASIS OF DETERMINATION.—

23 “(A) IN GENERAL.—Any person who en-
24 ters into a settlement pursuant to this sub-
25 section shall provide any information requested

1 by the President in accordance with section
2 104(e). The determination of whether a person
3 is eligible for an expedited settlement shall be
4 made on the basis of all information available
5 to the President at the time the determination
6 is made.

7 “(B) DECISION OF NONQUALIFICATION;
8 APPEAL.—

9 “(i) DECISION OF NONQUALIFICA-
10 TION.—If the President determines that a
11 party does not qualify for a settlement
12 under this subsection, the President shall
13 notify the party, in writing, within 90 days
14 after the later of—

15 “(I) a request by the party for
16 settlement under this subsection; or

17 “(II) the receipt of all informa-
18 tion required by the President from
19 the requesting party to make a deter-
20 mination under this paragraph,
21 stating the reasons for denial. If the Presi-
22 dent does not notify the party within such
23 90-day period, the request is deemed de-
24 nied.

25 “(ii) APPEAL.—

1 “(I) IN GENERAL.—Notwith-
2 standing any other provision of this
3 Act, a denial of settlement under this
4 subsection may be appealed.

5 “(II) AUTHORITY OF ENVIRON-
6 MENTAL APPEALS BOARD.—The Envi-
7 ronmental Appeals Board of the Envi-
8 ronmental Protection Agency is au-
9 thorized to adjudicate denials of set-
10 tlement under this subsection. Within
11 60 days of the date on which notice of
12 denial is received, a denial of settle-
13 ment may be appealed to the Board.
14 The Board may consider whether the
15 President has followed the provisions
16 of this Act but shall not determine
17 questions regarding liability.

18 “(III) PROCEDURAL RULES.—In
19 any appeal made pursuant to this
20 clause, the documents submitted by
21 the requester under clause (i)(II) are
22 not confidential. If a requester agrees
23 not to contest the share of liability
24 under section 107 assigned by the
25 President, the appeal shall include

1 only a determination of the request-
2 er's ability to pay its allocated share.

3 “(C) JUDICIAL PROCEDURES.—In review-
4 ing a proposed settlement under this subsection,
5 a United States district court shall give def-
6 erence to the President's determination that the
7 settlement is in the public interest and meets
8 applicable legal standards for court approval.
9 Any person who challenges a proposed settle-
10 ment bears the burden of proving that the pro-
11 posed settlement does not meet applicable legal
12 standards for court approval. If a settlement is
13 reached with a requester, the confidential infor-
14 mation supplied to the President under this
15 subsection may be submitted under seal to the
16 court for in camera review.

17 “(3) ADDITIONAL FACTORS RELEVANT TO SET-
18 TLEMENTS WITH MUNICIPALITIES.—In any settle-
19 ment with a municipality pursuant to this Act, the
20 President may take additional equitable factors into
21 account in determining an appropriate settlement
22 amount, including the limited resources available to
23 that party, and any in-kind services that the party
24 may provide to support the response action at the
25 facility. In considering the value of in-kind services,

1 the President shall consider the fair market value of
2 those services.”.

3 (3) In subsection (g)(4) by striking “\$500,000”
4 and inserting “\$2,000,000”.

5 (4) By striking paragraph (5) of subsection (g)
6 and inserting the following:

7 “(5) SMALL BUSINESS DEFINED.—In this sec-
8 tion, the term ‘small business’ refers to any business
9 entity that employs no more than 100 individuals
10 and is a ‘small business concern’ as defined under
11 the Small Business Act (15 U.S.C. 631 et seq.).”.

12 (5) By adding at the end of subsection (g) the
13 following:

14 “(7) DEADLINE.—If the President does not
15 make a settlement offer to a small business on or
16 before the 180th day following the date of the Presi-
17 dent’s determination that such small business is eli-
18 gible for an expedited settlement under this sub-
19 section, or on or before the 180th day following the
20 date of the enactment of this paragraph, whichever
21 is later, such small business shall have no further li-
22 ability under this Act, unless the failure to make a
23 settlement offer on or before such 180th day is due
24 to circumstances beyond the control of the Presi-
25 dent.

1 “(8) PREMIUMS.—In any settlement under this
2 Act with a small business, the President may not re-
3 quire the small business to pay any premium over
4 and above the small business’s share of liability.”.

5 (c) MUNICIPALITY DEFINED.—Section 101 (42
6 U.S.C. 9601) is amended by inserting at the end the fol-
7 lowing:

8 “(39) The term ‘municipality’ means a political
9 subdivision of a State, including a city, county, vil-
10 lage, town, township, borough, parish, school dis-
11 trict, sanitation district, water district, or other pub-
12 lic entity performing local governmental functions.
13 The term also includes a natural person acting in
14 the capacity of an official, employee, or agent of any
15 entity referred to in the preceding sentence in the
16 performance of governmental functions.”.

17 **SEC. 306. CLARIFICATION OF LIABILITY FOR RECYCLING**
18 **TRANSACTIONS.**

19 (a) RECYCLING TRANSACTIONS.—Title I (42 U.S.C.
20 9601 et seq.) is amended by adding at the end the fol-
21 lowing:

22 **“SEC. 128. RECYCLING TRANSACTIONS.**

23 “(a) LIABILITY CLARIFICATION.—(1) As provided in
24 subsections (b), (c), (d), (e), and (f), a person who ar-
25 ranged for the recycling of recyclable material shall not

1 be liable under sections 107(a)(3) and 107(a)(4) with re-
2 spect to such material.

3 “(2) A determination whether or not any person shall
4 be liable under section 107(a)(3) or 107(a)(4) for any ma-
5 terial that is not a recyclable material as that term is used
6 in subsections (b), (c), (d), (e), or (f) of this section shall
7 be made, without regard to subsection (b), (c), (d), (e),
8 or (f) of this section.

9 “(b) RECYCLABLE MATERIAL DEFINED.—For pur-
10 poses of this section, the term ‘recyclable material’ means
11 scrap paper, scrap plastic, scrap glass, scrap textiles,
12 scrap rubber (other than whole tires), scrap metal, or
13 spent lead-acid, spent nickel-cadmium, and other spent
14 batteries, as well as minor amounts of material incident
15 to or adhering to the scrap material as a result of its nor-
16 mal and customary use prior to becoming scrap; except
17 that such term shall not include—

18 “(1) shipping containers of a capacity from 30
19 liters to 3,000 liters, whether intact or not, having
20 any hazardous substance (but not metal bits and
21 pieces or hazardous substance that form an integral
22 part of the container) contained in or adhering
23 thereto; or

24 “(2) any item of material that contained PCBs
25 at a concentration in excess of 50 ppm or any new

1 standard promulgated pursuant to applicable Fed-
2 eral laws.

3 “(c) TRANSACTIONS INVOLVING SCRAP PAPER,
4 PLASTIC, GLASS, TEXTILES, OR RUBBER.—

5 “(1) IN GENERAL.—Transactions involving re-
6 cyclable materials that consist of scrap paper, scrap
7 plastic, scrap glass, scrap textiles, or scrap rubber
8 (other than whole tires) shall be deemed to be ar-
9 ranging for recycling if the person who arranged for
10 the transaction (by selling recyclable material or oth-
11 erwise arranging for the recycling of recyclable ma-
12 terial) can demonstrate by a preponderance of the
13 evidence that all of the following criteria were met
14 at the time of the transaction:

15 “(A) The recyclable material met a com-
16 mercial specification grade.

17 “(B) A market existed for the recyclable
18 material.

19 “(C) A substantial portion of the recyclable
20 material was made available for use as a feed-
21 stock for the manufacture of a new saleable
22 product.

23 “(D) The recyclable material could have
24 been a replacement or substitute for a virgin
25 raw material, or the product to be made from

1 the recyclable material could have been a re-
2 placement or substitute for a product made, in
3 whole or in part, from a virgin raw material.

4 “(E) For transactions occurring on or
5 after the 90th day following the date of the en-
6 actment of this section, the person exercised
7 reasonable care to determine that the facility
8 where the recyclable material would be handled,
9 processed, reclaimed, or otherwise managed by
10 another person (hereinafter in this section re-
11 ferred to as a ‘consuming facility’) was in com-
12 pliance with substantive (not procedural or ad-
13 ministrative) provisions of any Federal, State,
14 or local environmental law or regulation, or
15 compliance order or decree issued pursuant
16 thereto, applicable to the handling, processing,
17 reclamation, storage, or other management ac-
18 tivities associated with the recyclable material.

19 “(2) REASONABLE CARE.—For purposes of this
20 subsection, ‘reasonable care’ shall be determined
21 using criteria that include—

22 “(A) the price paid in the recycling trans-
23 action;

24 “(B) the ability of the person to detect the
25 nature of the consuming facility’s operations

1 concerning its handling, processing, reclama-
2 tion, or other management activities associated
3 with the recyclable material; and

4 “(C) the result of inquiries made to the ap-
5 propriate Federal, State, or local environmental
6 agency (or agencies) regarding the consuming
7 facility’s past and current compliance with sub-
8 stantive (not procedural or administrative) pro-
9 visions of any Federal, State, or local environ-
10 mental law or regulation, or compliance order
11 or decree issued pursuant thereto, applicable to
12 the handling, processing, reclamation, storage,
13 or other management activities associated with
14 the recyclable material.

15 “(3) TREATMENT OF CERTAIN REQUIREMENTS
16 AS SUBSTANTIVE PROVISIONS.—For purposes of this
17 subsection, a requirement to obtain a permit applica-
18 ble to the handling, processing, reclamation, or other
19 management activities associated with the recyclable
20 materials shall be deemed to be a substantive provi-
21 sion.

22 “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

23 “(1) IN GENERAL.—Transactions involving re-
24 cyclable materials that consist of scrap metal shall
25 be deemed to be arranging for recycling if the per-

1 son who arranged for the transaction (by selling re-
2 cyclable material or otherwise arranging for the re-
3 cycling of recyclable material) can demonstrate by a
4 preponderance of the evidence that at the time of
5 the transaction—

6 “(A) the person met the criteria set forth
7 in subsection (c) with respect to the scrap
8 metal;

9 “(B) the person was in compliance with
10 any applicable regulations or standards regard-
11 ing the storage, transport, management, or
12 other activities associated with the recycling of
13 scrap metal that the Administrator issues under
14 the Solid Waste Disposal Act (42 U.S.C. 6901
15 et seq.) after the date of the enactment of this
16 section and with regard to transactions occur-
17 ring after the effective date of such regulations
18 or standards; and

19 “(C) the person did not melt the scrap
20 metal prior to the transaction.

21 “(2) MELTING OF SCRAP METAL.—For pur-
22 poses of paragraph (1)(C), melting of scrap metal
23 does not include the thermal separation of 2 or more
24 materials due to differences in their melting points
25 (referred to as ‘sweating’).

1 “(3) SCRAP METAL DEFINED.—In this sub-
2 section, the term ‘scrap metal’ means—

3 “(A) bits and pieces of metal parts (such
4 as bars, turnings, rods, sheets, and wire) or
5 metal pieces that may be combined together
6 with bolts or soldering (such as radiators, scrap
7 automobiles, and railroad box cars) which when
8 worn or superfluous can be recycled; and

9 “(B) notwithstanding paragraph (1)(C),
10 metal byproducts of the production of copper
11 and copper based alloys that—

12 “(i) are not the sole or primary prod-
13 ucts of a secondary production process,

14 “(ii) are not produced separately from
15 the primary products of a secondary pro-
16 duction process,

17 “(iii) are not and have not been
18 stored in a pile or surface impoundment,
19 and

20 “(iv) are sold to another recycler that
21 is not speculatively accumulating such by-
22 products,

23 except for any scrap metal that the Administrator
24 excludes from this definition by regulation.

25 “(e) TRANSACTIONS INVOLVING BATTERIES.—

1 “(1) IN GENERAL.—Transactions involving re-
2 cyclable materials that consist of spent lead-acid bat-
3 teries, spent nickel-cadmium batteries, or other
4 spent batteries shall be deemed to be arranging for
5 recycling if the person who arranged for the trans-
6 action (by selling recyclable material or otherwise ar-
7 ranging for the recycling of recyclable material) can
8 demonstrate by a preponderance of the evidence that
9 at the time of the transaction—

10 “(A) the person met the criteria set forth
11 in subsection (c) with respect to the spent lead-
12 acid batteries, spent nickel-cadmium batteries,
13 or other spent batteries but did not recover the
14 valuable components of such batteries; and

15 “(B)(i) with respect to transactions involv-
16 ing lead-acid batteries, the person was in com-
17 pliance with applicable Federal environmental
18 regulations or standards, and any amendments
19 thereto, regarding the storage, transport, man-
20 agement, or other activities associated with the
21 recycling of spent lead-acid batteries;

22 “(ii) with respect to transactions involving
23 nickel-cadmium batteries, Federal environ-
24 mental regulations or standards were in effect
25 regarding the storage, transport, management,

1 or other activities associated with the recycling
2 of spent nickel-cadmium batteries and the per-
3 son was in compliance with such regulations or
4 standards and any amendments thereto; or

5 “(iii) with respect to transactions involving
6 other spent batteries, Federal environmental
7 regulations or standards were in effect regard-
8 ing the storage, transport, management, or
9 other activities associated with the recycling of
10 such batteries and the person was in compliance
11 with such regulations or standards and any
12 amendments thereto.

13 “(2) RECOVERY OF VALUABLE BATTERY COM-
14 PONENTS.—For purposes of paragraph (1)(A), a
15 person who, by contract, arranges or pays for proc-
16 essing of batteries by an unrelated third person and
17 receives from such third person materials reclaimed
18 from such batteries shall not thereby be deemed to
19 recover the valuable components of such batteries.

20 “(f) EXCLUSIONS.—

21 “(1) IN GENERAL.—The exemptions set forth in
22 subsections (c), (d), and (e) shall not apply if—

23 “(A) the person had an objectively reason-
24 able basis to believe at the time of the recycling
25 transaction that—

1 “(i) the recyclable material would not
2 be recycled;

3 “(ii) the recyclable material would be
4 burned as fuel or for energy recovery or in-
5 cineration; or

6 “(iii) for transactions occurring on or
7 before the 90th day following the date of
8 the enactment of this section, the con-
9 suming facility was not in compliance with
10 a substantive (not a procedural or adminis-
11 trative) provision of any Federal, State, or
12 local environmental law or regulation, or
13 compliance order or decree issued pursuant
14 thereto, applicable to the handling, proc-
15 essing, reclamation, or other management
16 activities associated with the recyclable
17 material;

18 “(B) the person had reason to believe that
19 hazardous substances had been added to the re-
20 cyclable material for purposes other than proc-
21 essing for recycling; or

22 “(C) the person failed to exercise reason-
23 able care with respect to the management and
24 handling of the recyclable material (including
25 adhering to customary industry practices cur-

1 rent at the time of the recycling transaction de-
2 signed to minimize, through source control, con-
3 tamination of the recyclable material by haz-
4 ardous substances).

5 “(2) OBJECTIVELY REASONABLE BASIS.—For
6 purposes of paragraph (1)(A), an objectively reason-
7 able basis for belief shall be determined using cri-
8 teria that include the size of the person’s business,
9 customary industry practices (including customary
10 industry practices current at the time of the recy-
11 cling transaction designed to minimize, through
12 source control, contamination of the recyclable mate-
13 rial by hazardous substances), the price paid in the
14 recycling transaction, and the ability of the person
15 to detect the nature of the consuming facility’s oper-
16 ations concerning its handling, processing, reclama-
17 tion, or other management activities associated with
18 the recyclable material.

19 “(3) TREATMENT OF CERTAIN REQUIREMENTS
20 AS SUBSTANTIVE PROVISIONS.—For purposes of this
21 subsection, a requirement to obtain a permit applica-
22 ble to the handling, processing, reclamation, or other
23 management activities associated with recyclable ma-
24 terial shall be deemed to be a substantive provision.

1 “(g) EFFECT ON OWNER LIABILITY.—Nothing in
2 this section shall be deemed to affect the liability of a per-
3 son under section 107(a)(1) or 107(a)(2).

4 “(h) RELATIONSHIP TO LIABILITY UNDER OTHER
5 LAWS.—Nothing in this section shall affect—

6 “(1) liability under any other Federal, State, or
7 local statute or regulation promulgated pursuant to
8 any such statute, including any requirements pro-
9 mulgated by the Administrator under the Solid
10 Waste Disposal Act (42 U.S.C. 6901 et seq.); or

11 “(2) the ability of the Administrator to promul-
12 gate regulations under any other statute, including
13 the Solid Waste Disposal Act (42 U.S.C. 6901 et
14 seq.).

15 “(i) LIMITATION ON STATUTORY CONSTRUCTION.—
16 Nothing in this section shall be construed to—

17 “(1) affect any defenses or liabilities of any per-
18 son to whom subsection (a)(1) does not apply; or

19 “(2) create any presumption of liability against
20 any person to whom subsection (a)(1) does not
21 apply.”.

22 (b) SERVICE STATION DEALERS.—Section 114(c)
23 (42 U.S.C. 9614(c)) is amended—

24 (1) in paragraph (1)(B)—

1 (A) by striking “authorities.” and inserting
2 “authorities that were in effect on the date of
3 such activity.”;

4 (2) in paragraph (2)—

5 (A) by striking “a service station dealer
6 may presume that”;

7 (B) by striking “is not mixed with” and in-
8 serting “is presumed to be not mixed with”;
9 and

10 (C) by striking subparagraphs (A) and (B)
11 and inserting the following:

12 “(A) has been removed from the engine of
13 a light duty motor vehicle or household appli-
14 ance by the owner of such vehicle or appliance
15 and is presented by such owner to the dealer
16 for collection, accumulation, and delivery to an
17 oil recycling facility; or

18 “(B) has been removed from such an en-
19 gine or appliance by the dealer for collection,
20 accumulation, and delivery to an oil recycling
21 facility.”; and

22 (3) by striking paragraph (4).

23 **SEC. 307. ALLOCATION.**

24 Title I (42 U.S.C. 9601 et seq.) is further amended
25 by adding at the end the following new section:

1 **“SEC. 129. ALLOCATION.**

2 “(a) PURPOSE OF ALLOCATION.—The purpose of an
3 allocation under this section is to determine an equitable
4 allocation of the costs of a removal or remedial action at
5 a facility on the National Priorities List that is eligible
6 for an allocation under this section, including the share
7 to be borne by the Trust Fund under subsection (i).

8 “(b) ELIGIBLE RESPONSE ACTION.—

9 “(1) IN GENERAL.—A removal or remedial ac-
10 tion is eligible for an allocation under this section if
11 the action is at a facility on the National Priorities
12 List and if—

13 “(A) the performance of the removal or re-
14 medial action is not the subject of an adminis-
15 trative order or consent decree as of September
16 29, 1999;

17 “(B) the President’s estimate of the costs
18 for performing such removal or remedial action
19 that have not been recovered by the President
20 as of September 29, 1999, exceeds \$2,000,000;
21 and

22 “(C) there are response costs attributable
23 to the Fund share under subsection (i).

24 “(2) EXCLUDED RESPONSE ACTIONS.—

1 “(A) CHAIN OF TITLE SITES.—Notwith-
2 standing paragraph (1), a removal or remedial
3 action is not eligible for an allocation if—

4 “(i) the facility is located on a contig-
5 uous area of real property under common
6 ownership or control; and

7 “(ii) all of the parties potentially lia-
8 ble for response costs are current or
9 former owners or operators of such facility,
10 unless the current owner of such facility is in-
11 solvent or defunct.

12 “(B) CURRENT OWNER.—If the current
13 owner of the property on which the facility is
14 located is not liable under section 107(b)(2),
15 the owner immediately preceding such owner
16 shall be considered to be the current owner of
17 the property for purposes of subparagraph (A).

18 “(C) AFFILIATED PARTIES.—If the current
19 owner is affiliated with any other person
20 through any direct or indirect familial relation-
21 ship or any contractual, corporate, or financial
22 relationship other than that created by instru-
23 ments by which title to the facility is conveyed
24 or financed or by a contract for the sale of
25 goods or services, and such other person is lia-

1 ble for response costs at the facility, such other
2 person's assets may be considered assets of the
3 current owner when determining under sub-
4 paragraph (A) whether the current owner is in-
5 solvent or defunct.

6 “(c) DISCRETIONARY ALLOCATION PROCESS.—Not-
7 withstanding subsection (b), the President may initiate an
8 allocation under this section for any removal or remedial
9 action at a facility listed on the National Priorities List
10 and may provide a Fund share under subsection (i).

11 “(d) ALLOCATION PROCESS.—For each eligible re-
12 moval or remedial action, the President shall ensure that
13 a fair and equitable allocation of liability is undertaken
14 at an appropriate time by a neutral allocator selected by
15 agreement of the parties under such process or procedures
16 as are agreed by the parties. An allocation under this sec-
17 tion shall apply to subsequent removal or remedial actions
18 for a facility unless the allocator determines that the allo-
19 cation should address only one or more of such removal
20 or remedial actions.

21 “(e) EARLY OFFER OF SETTLEMENT.—As soon as
22 practicable and prior to the selection of an allocator, the
23 President shall provide an estimate of the aggregate Fund
24 share in accordance with subsection (i). The President

1 shall offer to contribute to a settlement of liability for re-
2 sponse costs on the basis of this estimate.

3 “(f) REPRESENTATION OF THE UNITED STATES AND
4 AFFECTED STATES.—The Administrator or the Attorney
5 General, as a representative of the Fund, and a represent-
6 ative of any State that is or may be responsible pursuant
7 to section 104(c)(3) for any costs of a removal or remedial
8 action that is the subject of an allocation shall be entitled
9 to participate in the allocation proceeding to the same ex-
10 tent as any potentially responsible party.

11 “(g) MORATORIUM ON LITIGATION.—

12 “(1) MORATORIUM ON LITIGATION.—No person
13 may commence any civil action or assert any claim
14 under this Act seeking recovery of any response
15 costs, or contribution toward such costs, in connec-
16 tion with any response action for which the Presi-
17 dent has initiated an allocation under this section,
18 until 150 days after issuance of the allocator’s re-
19 port or of a report under this section.

20 “(2) STAY.—If any action or claim referred to
21 in paragraph (1) is pending on the date of enact-
22 ment of this section or on the date of initiation of
23 an allocation, such action or claim (including any
24 pendant claim under State law over which a court is
25 exercising jurisdiction) shall be stayed until 150

1 days after the issuance of the allocator's report or
2 of a report under this section, unless the court de-
3 termines that a stay will result in manifest injustice.

4 “(3) TOLLING OF LIMITATIONS PERIOD.—Any
5 applicable limitations period with respect to actions
6 subject to paragraph (1) shall be tolled from the ear-
7 lier of—

8 “(A) the date of listing of the facility on
9 the National Priorities List, where such listing
10 occurs after the date of enactment of this sec-
11 tion; or

12 “(B) the commencement of the allocation
13 process pursuant to this section, until 180 days
14 after the President rejects or waives the Presi-
15 dent's right to reject the allocator's report.

16 “(h) EFFECT ON PRINCIPLES OF LIABILITY.—The
17 allocation process under this section shall not be construed
18 to modify or affect in any way the principles of liability
19 under this title as determined by the courts of the United
20 States.

21 “(i) FUND SHARE.—For each removal or remedial
22 action that is the subject of an allocation under this sec-
23 tion, the allocator shall determine the share of response
24 costs, if any, to be allocated to the Fund. The Fund share
25 shall consist of the sum of following amounts:

1 “(1) The amount attributable to the aggregate
2 share of response costs that the allocator determines
3 to be attributable to parties who are not affiliated
4 with any potentially responsible party and whom the
5 President determines are insolvent or defunct.

6 “(2) The amount attributable to the difference
7 in the aggregate share of response costs that the al-
8 locator determines to be attributable to parties who
9 have resolved their liability to the United States
10 under section 122(g)(1)(B) (relating to limited abil-
11 ity to pay settlements) for the removal or remedial
12 action and the amount actually assumed by those
13 parties in any settlement for the response action
14 with the United States.

15 “(3) Except as provided in subsection (j), the
16 amount attributable to the aggregate share of re-
17 sponse costs that the allocator determines to be at-
18 tributable to persons who are entitled to an exemp-
19 tion from liability under subsection (t) or (u) of sec-
20 tion 107 or section 114(c) or 128 at a facility or
21 vessel on the National Priorities List.

22 “(4) The amount attributable to the difference
23 in the aggregate share of response costs that an allo-
24 cator determines to be attributable to persons sub-
25 ject to a limitation on liability under section 107(u)

1 or 107(v) and the amount actually assumed by those
2 parties in accordance with such limitation.

3 “(j) CERTAIN MSW GENERATORS.—Notwith-
4 standing subsection (i)(3), the allocator shall not attribute
5 any response costs to any person who would have been
6 liable under section 107(a)(3) or 107(a)(4) but for the ex-
7 emption from liability under section 107(u)(3).

8 “(k) UNATTRIBUTABLE SHARE.—The share attrib-
9 utable to the aggregate share of response costs incurred
10 to respond to materials containing hazardous substances
11 for which no generator, transporter, or owner or operator
12 at the time of disposal or placement, can be identified shall
13 be divided pro rata among the potentially responsible par-
14 ties and the Fund share determined under subsection (i).

15 “(l) EXPEDITED ALLOCATION.—At the request of the
16 potentially responsible parties or the United States, to as-
17 sist in reaching settlement, the allocator may, prior to
18 reaching a final allocation of response costs among all par-
19 ties, first provide an estimate of the aggregate Fund
20 share, in accordance with subsection (i), and an estimate
21 of the aggregate share of the potentially responsible par-
22 ties.

23 “(m) SETTLEMENT BEFORE ALLOCATION DETER-
24 MINATION.—

1 “(1) SETTLEMENT OF ALL REMOVAL OR REME-
2 DIAL COSTS.—A group of potentially responsible
3 parties may submit to the allocator a private alloca-
4 tion for any removal or remedial action that is with-
5 in the scope of the allocation. If such private alloca-
6 tion meets each of the following criteria, the allo-
7 cator shall promptly adopt it as the allocation re-
8 port:

9 “(A) The private allocation is a binding al-
10 location of at least 80 percent of the past,
11 present, and future costs of the removal or re-
12 medial action.

13 “(B) The private allocation does not allo-
14 cate any share to any person who is not a sig-
15 natory to the private allocation.

16 “(C) The signatories to the private alloca-
17 tion waive their rights to seek recovery of re-
18 moval or remedial costs or contribution under
19 this Act with respect to the removal or remedial
20 action from any other party at the facility.

21 “(2) OTHER SETTLEMENTS.—The President
22 may use the authority under section 122(g) to enter
23 into settlement agreements with respect to any re-
24 sponse action that is the subject of an allocation at
25 any time.

1 “(n) SETTLEMENTS BASED ON ALLOCATIONS.—

2 “(1) IN GENERAL.—Subject to paragraph (2),
3 the President shall accept an offer of settlement of
4 liability for response costs for a removal or remedial
5 action that is the subject of an allocation if—

6 “(A) the offer is made within 90 days after
7 issuance of the allocator’s report; and

8 “(B) the offer is based on the share of re-
9 sponse costs specified by the allocator and such
10 other terms and conditions (other than the allo-
11 cated share of response costs) as are acceptable
12 to the President.

13 “(2) REJECTION OF ALLOCATION REPORT.—
14 The requirement of paragraph (1) to accept an offer
15 of settlement shall not apply if the Administrator
16 and the Attorney General reject the allocation re-
17 port.

18 “(o) REIMBURSEMENT FOR UAO PERFORMANCE.—

19 “(1) REIMBURSEMENT.—The Administrator
20 shall enter into agreements to provide mixed funding
21 to reimburse parties who satisfactorily perform, pur-
22 suant to an administrative order issued under sec-
23 tion 106, a removal or remedial action eligible for an
24 allocation under subsection (b) for the reasonable

1 and necessary costs of such removal or remedial ac-
2 tion to the extent that—

3 “(A) the costs incurred by a performing
4 party exceed the share of response costs as-
5 signed to such party in an allocation that is
6 performed in accordance with the provisions of
7 this section;

8 “(B) the allocation is not rejected by the
9 United States; and

10 “(C) the performing party, in consideration
11 for such reimbursement—

12 “(i) agrees not to contest liability for
13 all response costs not inconsistent with the
14 National Contingency Plan to the extent of
15 the allocated share;

16 “(ii) receives no covenant not to sue;
17 and

18 “(iii) waives contribution rights
19 against all parties who are potentially re-
20 sponsible parties for the response action,
21 as well as waives any rights to challenge
22 any settlement the President enters into
23 with any other potentially responsible
24 party.

1 “(2) OFFSET.—Any reimbursement provided to
2 a performing party under this subsection shall be
3 subject to equitable offset or reduction by the Ad-
4 ministrator upon a finding of a failure to perform
5 any aspect of the remedy in a proper and timely
6 manner.

7 “(3) TIME OF PAYMENT.—Any reimbursement
8 to a performing party under this subsection shall be
9 paid after work is completed, but no sooner than
10 completion of the construction of the remedial action
11 and, subject to paragraph (5), without any increase
12 for interest or inflation.

13 “(4) LIMIT ON AMOUNT OF REIMBURSE-
14 MENT.—The amount of reimbursement under this
15 subsection shall be further limited as follows:

16 “(A) Performing parties who waive their
17 right to challenge remedy selection at the end
18 of the moratorium following allocation shall be
19 entitled to reimbursement of actual dollars
20 spent by each such performing party in excess
21 of the party’s share and attributable by the al-
22 locator to the Fund share under subsection (i).

23 “(B) Performing parties who retain their
24 right to challenge the remedy shall be reim-
25 bursed (i) for actual dollars spent by each such

1 performing party, but not to exceed 90 percent
2 of the Fund share, or (ii) an amount equal to
3 80 percent of the Fund share if the Fund share
4 is less than 20 percent of responsibility at the
5 site.

6 “(5) REIMBURSEMENT OF SHARES ATTRIB-
7 UTABLE TO OTHER PARTIES.—If reimbursement is
8 made under this subsection to a performing party
9 for work in excess of the performing party’s allo-
10 cated share that is not attributable to the Fund
11 share, the performing party shall be entitled to all
12 interest (prejudgment and post judgment, whether
13 recovered from a party or earned in a site account)
14 that has accrued on money recovered by the United
15 States from other parties for such work at the time
16 construction of the remedy is completed.

17 “(6) REIMBURSEMENT CLAIMS.—The Adminis-
18 trator shall require that all claims for reimburse-
19 ment be supported by—

20 “(A) documentation of actual costs in-
21 curred; and

22 “(B) sufficient information to enable the
23 Administrator to determine whether such costs
24 were reasonable.

1 “(7) INDEPENDENT AUDITING.—The Adminis-
2 trator may require independent auditing of any
3 claim for reimbursement.

4 “(p) POST-SETTLEMENT LITIGATION.—Following
5 expiration of the moratorium periods under subsection (g),
6 the United States may request the court to lift the stay
7 and proceed with an action under this Act against any
8 potentially responsible party that has not resolved its li-
9 ability to the United States following an allocation, seek-
10 ing to recover response costs that are not recovered
11 through settlements with other persons. All such actions
12 shall be governed by the principles of liability under this
13 Act as determined by the courts of the United States.

14 “(q) RESPONSE COSTS.—

15 “(1) DESCRIPTION.—The following costs shall
16 be considered response costs for purposes of this
17 Act:

18 “(A) Costs incurred by the United States
19 and the court of implementing the allocation
20 procedure set forth in this section, including
21 reasonable fees and expenses of the allocator.

22 “(B) Costs paid from amounts made avail-
23 able under section 111(a)(1).

24 “(2) SETTLED PARTIES.—Any costs of alloca-
25 tion described in paragraph (1)(A) and incurred

1 after a party has settled all of its liability with re-
2 spect to the response action or actions that are the
3 subject of the allocation may not be recovered from
4 such party.

5 “(r) FEDERAL, STATE, AND LOCAL AGENCIES.—All
6 Federal, State, and local governmental departments, agen-
7 cies, or instrumentalities that are identified as potentially
8 responsible parties shall be subject to, and be entitled to
9 the benefits of, the allocation process and allocation deter-
10 mination provided by this section to the same extent as
11 any other party.

12 “(s) SOURCE OF FUNDS.—Payments made by the
13 Trust Fund, or work performed on behalf of the Trust
14 Fund, to meet obligations incurred by the President under
15 this section to pay a Fund share or to reimburse parties
16 for costs incurred in excess of the parties’ allocated shares
17 under subsections (e), (m), (n), or (o) shall be funded from
18 amounts made available by section 111(a)(1).

19 “(t) SAVINGS PROVISIONS.—Except as otherwise ex-
20 pressly provided, nothing in this section shall limit or af-
21 fect the following:

22 “(1) The President’s—

23 “(A) authority to exercise the powers con-
24 ferred by sections 103, 104, 105, 106, 107, or
25 122;

1 “(B) authority to commence an action
2 against a party where there is a contempora-
3 neous filing of a judicial consent decree resolv-
4 ing that party’s liability;

5 “(C) authority to file a proof of claim or
6 take other action in a proceeding under title 11,
7 United States Code;

8 “(D) authority to file a petition to preserve
9 testimony under Rule 27 of the Federal Rules
10 of Civil Procedure; or

11 “(E) authority to take action to prevent
12 dissipation of assets, including actions under
13 chapter 176 of title 28, United States Code.

14 “(2) The ability of any person to resolve its li-
15 ability at a facility to any other person at any time
16 before or during the allocation process.

17 “(3) The validity, enforceability, finality, or
18 merits of any judicial or administrative order, judg-
19 ment, or decree issued, signed, lodged, or entered,
20 before the date of enactment of this paragraph with
21 respect to liability under this Act, or authority to
22 modify any such order, judgment, or decree with re-
23 gard to the response action addressed in the order,
24 judgment or decree.

1 “(4) The validity, enforceability, finality, or
2 merits of any pre-existing contract or agreement re-
3 lating to any allocation of responsibility or any in-
4 demnity for, or sharing of, any response costs under
5 this Act.”.

6 **SEC. 308. STANDARD FOR CLEANUP BY DRY CLEANERS.**

7 (a) GENERAL RULE.—The maximum level of remedi-
8 ation for a dry cleaning solvent in the soil, surface water,
9 groundwater, and other environmental media (other than
10 for groundwater or surface water actually used as a drink-
11 ing water source) that any person may require of a dry
12 cleaner shall be equal to the soil screening level for inhala-
13 tion for that dry cleaning solvent determined in accord-
14 ance with the Soil Screening Guidance Document.

15 (b) DEFAULT MAXIMUM REMEDIATION LEVEL.—
16 Until a maximum remediation level is determined for a
17 facility in accordance with subsection (a), the maximum
18 level of remediation of that facility for a dry cleaning sol-
19 vent in the soil, surface water, groundwater, and other en-
20 vironmental media (other than for groundwater or surface
21 water actually used as a drinking water source) that any
22 person may require of a dry cleaner shall be equal to the
23 generic soil screening level for inhalation for that dry
24 cleaning solvent as set forth in the Soil Screening Guid-
25 ance Document.

1 (c) APPLICABILITY TO CERCLA.—The applicable re-
2 quirements for dry cleaning solvents under the Com-
3 prehensive Environmental Response, Compensation, and
4 Liability Act of 1980 shall be the remediation standards
5 established by subsections (a) and (b).

6 (d) CHANGES TO STANDARDS.—The Administrator
7 of the Environmental Protection Agency may, by rule,
8 change the standards of subsections (a) and (b) in accord-
9 ance with the provisions of any revised Soil Screening
10 Guidance Document published after the date of enactment
11 of this Act if necessary to protect human health or the
12 environment.

13 (e) NONPREEMPTION.—Nothing in this section—
14 (1) shall preempt or otherwise prevent the Fed-
15 eral Government or a State government from reme-
16 diating soil, surface water, groundwater, or other en-
17 vironmental media to a level other than the max-
18 imum remediation level determined in accordance
19 with this section if the government determines, on a
20 site-by-site basis, that a more stringent standard is
21 necessary to protect human health or the environ-
22 ment; or
23 (2) shall alter or affect the Federal drinking
24 water standards for public consumption under title
25 XIV of the Public Health Service Act.

1 (f) DEFINITIONS.—For purposes of this section, the
2 following definitions apply:

3 (1) DRY CLEANER.—The term “dry cleaner”
4 means a person who was or is engaged in dry clean-
5 ing or in supplying goods or equipment to such a
6 person or the owner of land on or a facility in which
7 a person was or is conducting dry cleaning

8 (2) PERSON.—The term “person” includes a
9 governmental entity.

10 (3) SOIL SCREENING GUIDANCE DOCUMENT.—
11 The term “Soil Screening Guidance Document”
12 means the Soil Screening Guidance: User’s Guide
13 (EPA/540/R-96/018) and the Soil Screening Guid-
14 ance: Technical Background Document (EPA/540/
15 R-95/128) developed by the Environmental Protec-
16 tion Agency.